

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HANGZHOU CHIC INTELLIGENT
TECHNOLOGY CO. and UNICORN
GLOBAL, INC.,

Plaintiffs,

v.

THE PARTNERSHIPS AND
UNICORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE A,
Defendants.

Case No.

1:20-cv-

04806

VIDEOCONFERENCE DEPOSITION OF

JIM GANDY

DATE: Wednesday, October 26, 2022

TIME: 10:04 a.m.

LOCATION: Remote Proceeding

Southport, North Carolina

REPORTED BY: Arkady Sandoval, Notary Public

JOB NO.: 5506428

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES</p> <p>2 ON BEHALF OF PLAINTIFFS HANGZHOU CHIC INTELLIGENT</p> <p>3 TECHNOLOGY CO. and UNICORN GLOBAL, INC.:</p> <p>4 MARK BERKOWITZ, ESQUIRE (by videoconference)</p> <p>5 Tarter Krinsky & Drogin, LLP</p> <p>6 1350 Broadway</p> <p>7 New York, NY 10018</p> <p>8 mberkowitz@tarterkrinsky.com</p> <p>9 212-216-1166</p> <p>10</p> <p>11 ON BEHALF OF JIM GANDY:</p> <p>12 ROBIN HE CHENG, ESQUIRE (by videoconference)</p> <p>13 Glacier Law, PLLC (NY)</p> <p>14 200 Park Avenue, Suite 1703</p> <p>15 New York, NY 10166</p> <p>16 robin.cheng@glacier.law</p> <p>17</p> <p>18 ALSO PRESENT:</p> <p>19 Chandler Sturm, Esquire (by videoconference)</p> <p>20 Queena Zhang, Esquire (by videoconference)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 J. GANDY</p> <p>2 THE REPORTER: Good morning. My name</p> <p>3 is Arkady Sandoval; I am the reporter</p> <p>4 assigned by Veritext to take the record of</p> <p>5 this proceeding. We are now on the record</p> <p>6 at 10:04 a.m.</p> <p>7 This is the deposition of Jim Gandy</p> <p>8 taken in the matter of</p> <p>9 Hangzhou Chic Intelligent Technology Co.,</p> <p>10 and Unicorn Global, Inc., v.</p> <p>11 The Partnerships and Unicorported</p> <p>12 Associations Identified on Schedule A at</p> <p>13 on October 26, 2022, at 5961 Spikerush</p> <p>14 Trail, Southport, North Carolina.</p> <p>15 I am a notary authorized to take</p> <p>16 acknowledgments and administer oaths in</p> <p>17 New Jersey and New York. Parties agree</p> <p>18 that I will swear in the witness remotely</p> <p>19 outside of his presence.</p> <p>20 Additionally, absent an objection on</p> <p>21 the record before the witness is sworn,</p> <p>22 all parties and the witness understand and</p> <p>23 agree that any certified transcript</p> <p>24 produced from the recording virtually of</p> <p>25 this proceeding:</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2 EXAMINATION: PAGE</p> <p>3 By Mr. Berkowitz 6</p> <p>4 By Mr. Cheng 125</p> <p>5</p> <p>6 EXHIBITS</p> <p>7 NO. DESCRIPTION PAGE</p> <p>8 Exhibit 1 Jim Gandy Opening Report 19</p> <p>9 Exhibit 2 Jim Gandy Rebuttal Report 56</p> <p>10 Exhibit 3 Expert Declaration of Lance Rake 73</p> <p>11 (Exhibits attached.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 J. GANDY</p> <p>2 - is intended for all uses permitted</p> <p>3 under applicable procedural and</p> <p>4 evidentiary rules and laws in the same</p> <p>5 manner as a deposition recorded by</p> <p>6 stenographic means; and</p> <p>7 - shall constitute written</p> <p>8 stipulation of such.</p> <p>9 At this time will counsel please</p> <p>10 identify themselves for the record.</p> <p>11 Mr. Cheng, if you could begin?</p> <p>12 MR. CHENG: Good morning. My name is</p> <p>13 He Cheng and also Robin Cheng, and I am</p> <p>14 the counsel for the deponent.</p> <p>15 MR. BERKOWITZ: Good morning. This</p> <p>16 is Mark Berkowitz, and I am here with</p> <p>17 Chandler Sturm, both of Tarter Krinsky &</p> <p>18 Drogin, on behalf of plaintiffs.</p> <p>19 THE REPORTER: Thank you.</p> <p>20 Hearing no objection, I will now</p> <p>21 swear in the witness.</p> <p>22 Mr. Gandy, please raise your right</p> <p>23 hand.</p> <p>24 //</p> <p>25 //</p>

<p style="text-align: right;">Page 6</p> <p>1 J. GANDY</p> <p>2 WHEREUPON,</p> <p>3 JIM GANDY,</p> <p>4 called as a witness, and having been first</p> <p>5 duly sworn to tell the truth, the whole</p> <p>6 truth, and nothing but the truth, was</p> <p>7 examined and testified as follows:</p> <p>8 THE REPORTER: Thank you. Counsel.</p> <p>9 EXAMINATION</p> <p>10 BY MR. BERKOWITZ:</p> <p>11 Q Good morning, Mr. Gandy.</p> <p>12 A Good morning.</p> <p>13 Q If you don't mind, could you</p> <p>14 state your full name for the record?</p> <p>15 A Yes, my name is James M. Gandy.</p> <p>16 Q Okay. Do you normally go by</p> <p>17 Jim?</p> <p>18 A I go by Jim.</p> <p>19 Q Okay. I see on some of your</p> <p>20 forms, you say "Jim," sometimes you say</p> <p>21 "James." Just want to make sure I have</p> <p>22 the right person today.</p> <p>23 A Yes.</p> <p>24 Q Okay. So my name is</p> <p>25 Mark Berkowitz. I am one of the</p>	<p style="text-align: right;">Page 8</p> <p>1 J. GANDY</p> <p>2 Q Very good. Okay. So you're</p> <p>3 familiar with the process.</p> <p>4 A Yes.</p> <p>5 Q Okay. So today I'm going to be</p> <p>6 asking you some questions. The reporter</p> <p>7 is going to be taking down your answers.</p> <p>8 Do you understand that you are under oath?</p> <p>9 A Yes, I do.</p> <p>10 Q Do you know what that oath</p> <p>11 means?</p> <p>12 A That I have to tell the truth,</p> <p>13 whatever questions you're asking me.</p> <p>14 Q Great. The court reporter</p> <p>15 mentioned some of the ground rules. I'll</p> <p>16 just go over them quickly. I know you're</p> <p>17 familiar with the process. So I'm going</p> <p>18 to be asking a series of questions. If</p> <p>19 you don't understand my question, ask to</p> <p>20 clarify it. Is that okay?</p> <p>21 A Yes.</p> <p>22 Q Okay. I'm going to assume that</p> <p>23 you understand the questions that I ask</p> <p>24 unless you tell me that you don't</p> <p>25 understand then. Is that fair?</p>
<p style="text-align: right;">Page 7</p> <p>1 J. GANDY</p> <p>2 attorney's for plaintiffs in this case.</p> <p>3 We are doing this remotely today.</p> <p>4 Obviously, if there are any technical</p> <p>5 problems, you have trouble hearing or</p> <p>6 video drops out, let us know. We can</p> <p>7 always take a break. It seems like it</p> <p>8 happens at least once or twice during</p> <p>9 these things.</p> <p>10 A Okay.</p> <p>11 Q But we'll do our best. Have you</p> <p>12 had your deposition taken before?</p> <p>13 A Yes, I have.</p> <p>14 Q How many times?</p> <p>15 A I think five.</p> <p>16 Q Okay. When was the last time</p> <p>17 you had your deposition taken?</p> <p>18 A 2021.</p> <p>19 Q Okay. So that was, I guess,</p> <p>20 during the pandemic?</p> <p>21 A Yes.</p> <p>22 Q So you've done a remote</p> <p>23 deposition before?</p> <p>24 A Yes, I've done two remote</p> <p>25 depositions.</p>	<p style="text-align: right;">Page 9</p> <p>1 J. GANDY</p> <p>2 A Yes, that's fair.</p> <p>3 Q You understand that your counsel</p> <p>4 may object from time to time, but unless</p> <p>5 you're instructed not to, you still need</p> <p>6 to answer.</p> <p>7 A Yes, I understand.</p> <p>8 Q Okay. Try to avoid any non-</p> <p>9 audible responses -- the head nods and</p> <p>10 head shakes -- because the court reporter</p> <p>11 is taking down a verbatim transcript. Is</p> <p>12 that all right?</p> <p>13 A Yes.</p> <p>14 Q Okay. Since we're doing this</p> <p>15 remotely, let's try not to talk over each</p> <p>16 other, again, for the benefit of the court</p> <p>17 reporter so we have a nice, clear record.</p> <p>18 Is that all right?</p> <p>19 A Yes.</p> <p>20 Q Okay. If at any time you need a</p> <p>21 break, of course just please tell us. The</p> <p>22 only thing I ask is that if we are in the</p> <p>23 middle of a question, please answer and</p> <p>24 then we can go take our break. Is that</p> <p>25 all right?</p>

<p style="text-align: right;">Page 10</p> <p>1 J. GANDY</p> <p>2 A Okay. Sure, that's fine.</p> <p>3 Q Is there any reason you would</p> <p>4 not be able to provide truthful and</p> <p>5 complete testimony today?</p> <p>6 A I don't think so.</p> <p>7 Q Are you on any medications that</p> <p>8 would interfere with your ability to</p> <p>9 provide complete and truthful testimony?</p> <p>10 A No.</p> <p>11 Q Any health issues that would</p> <p>12 interfere with your ability to provide a</p> <p>13 complete and truthful testimony?</p> <p>14 A No.</p> <p>15 Q Okay. Thank you. Do you have</p> <p>16 an understanding as to why you're here</p> <p>17 today?</p> <p>18 A Yes, I do.</p> <p>19 Q What is that understanding, sir?</p> <p>20 A That I'm here to, I guess,</p> <p>21 discuss my reports that I have provided to</p> <p>22 Mr. Cheng in this case.</p> <p>23 Q You have an understanding of</p> <p>24 what this case relates to generally?</p> <p>25 A Yes. It relates to hoverboard</p>	<p style="text-align: right;">Page 12</p> <p>1 J. GANDY</p> <p>2 all right with you.</p> <p>3 A That's fine.</p> <p>4 Q Okay. If there is a situation</p> <p>5 that arises where you want to refer to a</p> <p>6 specific defendant, just please go ahead</p> <p>7 and point that out, and I will do the</p> <p>8 same. I'm not sure if that situation will</p> <p>9 come up, but just to avoid any issues.</p> <p>10 A That's fine.</p> <p>11 Q When did you first get engaged</p> <p>12 to work in this matter?</p> <p>13 A I was contacted by Mr. Cheng in</p> <p>14 August of 2021.</p> <p>15 Q Prior to that, had you worked</p> <p>16 with any of the defendants in this case</p> <p>17 before?</p> <p>18 A No, I have not.</p> <p>19 Q Had you heard of any of the</p> <p>20 defendants in this case before?</p> <p>21 A No, I had not.</p> <p>22 Q Any familiarity with their</p> <p>23 products prior to 2021?</p> <p>24 A Not prior to being contacted,</p> <p>25 yes.</p>
<p style="text-align: right;">Page 11</p> <p>1 J. GANDY</p> <p>2 designs.</p> <p>3 Q Okay. You understand that the</p> <p>4 plaintiffs accuse the defendants of</p> <p>5 infringing a number of design patents</p> <p>6 relating to hoverboards; is that fair?</p> <p>7 A That's correct.</p> <p>8 Q Okay. And it's your</p> <p>9 understanding that the defendants dispute</p> <p>10 those contentions; is that fair?</p> <p>11 A Yes.</p> <p>12 Q Okay. So we represent, there's</p> <p>13 two plaintiffs. There's Hangzhou Chic,</p> <p>14 and there's Unicorn Global. To avoid</p> <p>15 having to continually butcher those names,</p> <p>16 I'm going to call them "plaintiffs." Is</p> <p>17 that all right with you?</p> <p>18 A Sure.</p> <p>19 Q And I understand that your</p> <p>20 report was provided to Mr. Cheng on</p> <p>21 benefit of eight different defendants. Is</p> <p>22 that your understanding as well?</p> <p>23 A That's my understanding, yes.</p> <p>24 Q So I'm going to refer to them</p> <p>25 collectively as "defendants," if that's</p>	<p style="text-align: right;">Page 13</p> <p>1 J. GANDY</p> <p>2 Q Okay. Had you previously worked</p> <p>3 with Mr. Cheng before?</p> <p>4 A No, I have not.</p> <p>5 Q Had you worked with his law</p> <p>6 firm, Glacier Firm, before?</p> <p>7 A No, no I have not.</p> <p>8 Q Okay. Were you contacted</p> <p>9 directly by Mr. Cheng or through an</p> <p>10 agency?</p> <p>11 A I was contacted by Mr. Cheng.</p> <p>12 Q Okay. And I just have to ask</p> <p>13 these questions. Do you have any</p> <p>14 financial interest in any of the</p> <p>15 defendants?</p> <p>16 A No, I do not.</p> <p>17 Q Okay. But you are being paid</p> <p>18 hourly for your work on this case; is that</p> <p>19 correct?</p> <p>20 A That's correct, yes.</p> <p>21 Q I believe it's 350 an hour?</p> <p>22 A That's correct.</p> <p>23 Q Okay. And is your compensation,</p> <p>24 does that hourly rate vary depending on</p> <p>25 whether you're writing reports,</p>

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<p style="text-align: right;">Page 14</p> <p>1 J. GANDY</p> <p>2 participating in depositions, trial,</p> <p>3 anything like that?</p> <p>4 A No, it's the same for any of</p> <p>5 those situations.</p> <p>6 Q Okay. And is any of your</p> <p>7 compensation dependent on the outcome of</p> <p>8 this lawsuit?</p> <p>9 A No, it's not.</p> <p>10 Q Besides the defendants and</p> <p>11 counsel for the defendants, have you</p> <p>12 spoken with anybody about this case?</p> <p>13 A No. No, I have not.</p> <p>14 Q That was actually a poor</p> <p>15 question. Have you ever spoken directly</p> <p>16 with any of the defendants in this case?</p> <p>17 A No, I have not.</p> <p>18 Q So your only contacts concerning</p> <p>19 this case are with counsel?</p> <p>20 A That's correct. That's correct.</p> <p>21 Mr. Cheng is the only person I have spoken</p> <p>22 to about this case.</p> <p>23 Q Got it. And did you do anything</p> <p>24 to prepare for today?</p> <p>25 A I'm sorry, what was that?</p>	<p style="text-align: right;">Page 16</p> <p>1 J. GANDY</p> <p>2 Mr. Hatch's reports again, which I</p> <p>3 rebutted. That's basically it.</p> <p>4 Q When you say "Mr. Hatch's</p> <p>5 report," did you review both his initial</p> <p>6 expert report and his rebuttal report?</p> <p>7 A Yes, I have.</p> <p>8 Q Okay. Did you review the expert</p> <p>9 -- I'm sorry, strike that. Did you review</p> <p>10 the reports of any other experts in this</p> <p>11 case?</p> <p>12 A No, I have not.</p> <p>13 Q Are you familiar with an</p> <p>14 individual named Lance Rake?</p> <p>15 A No, I'm not.</p> <p>16 Q Do you know whether the</p> <p>17 defendants in this case have retained any</p> <p>18 other experts?</p> <p>19 A I'm not aware of that. I have</p> <p>20 not been told that.</p> <p>21 Q Have you reviewed the accused</p> <p>22 products in this case?</p> <p>23 A I have reviewed them through the</p> <p>24 photographs that I have received.</p> <p>25 Q Have you inspected any physical</p>
<p style="text-align: right;">Page 15</p> <p>1 J. GANDY</p> <p>2 Q Did you do anything to prepare</p> <p>3 for today's deposition?</p> <p>4 A I've gone over my reports, and I</p> <p>5 had just a prep session with Mr. Cheng,</p> <p>6 just to go over some of the questions that</p> <p>7 he felt that I might be asked.</p> <p>8 Q So when did you meet with</p> <p>9 Mr. Cheng?</p> <p>10 A That was last Wednesday, I</p> <p>11 believe it was. Yes.</p> <p>12 Q You just met with Mr. Cheng that</p> <p>13 one time?</p> <p>14 A I met with Mr. Cheng last</p> <p>15 Wednesday. I met with one of his</p> <p>16 colleagues, Iris, I think it's Ju</p> <p>17 yesterday.</p> <p>18 Q And again, did you speak with</p> <p>19 anybody else besides the attorneys about</p> <p>20 this case?</p> <p>21 A No. No, I have not.</p> <p>22 Q And besides your expert reports,</p> <p>23 did you review any other materials in</p> <p>24 preparation for today?</p> <p>25 A Just my reports. I looked at</p>	<p style="text-align: right;">Page 17</p> <p>1 J. GANDY</p> <p>2 products?</p> <p>3 A No, I have not.</p> <p>4 Q You have not ridden any of the</p> <p>5 hoverboards?</p> <p>6 A No.</p> <p>7 Q Just kidding. All right. So</p> <p>8 I'm going to bring up what I'm going to</p> <p>9 mark as Exhibit 1, your expert report.</p> <p>10 But before I do that, Mr. Gandy, do you</p> <p>11 have any papers in front of you? Any</p> <p>12 copies of your reports or anything like</p> <p>13 that? I have some portions of the copies</p> <p>14 of my report that I felt maybe I might</p> <p>15 need to refer to, depending on the</p> <p>16 questions that are asked.</p> <p>17 Q Okay. But you don't have a full</p> <p>18 set there with you?</p> <p>19 A No, no I do not.</p> <p>20 Q Okay. So I'm going to go ahead</p> <p>21 and as I go put the exhibits into the chat</p> <p>22 so you can download them. And I can also</p> <p>23 bring them up on the screen so we can look</p> <p>24 at them together.</p> <p>25 A Okay.</p>

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<p style="text-align: right;">Page 18</p> <p>1 J. GANDY</p> <p>2 Q If I knew how to do that.</p> <p>3 MR. BERKOWITZ: Sorry, question for</p> <p>4 the court reporter. Am I able to drop</p> <p>5 exhibits into the chat?</p> <p>6 THE REPORTER: So yeah, let me just</p> <p>7 jump in here. Mr. Berkowitz, from what I</p> <p>8 understand, copying and pasting doesn't</p> <p>9 work with the Zoom chat. I mean, if you</p> <p>10 want to share on the screen, you can do</p> <p>11 that. If you want to e-mail them to me, I</p> <p>12 can share them as well.</p> <p>13 MR. BERKOWITZ: No, I'll just share</p> <p>14 them as we go, then. No problem.</p> <p>15 THE REPORTER: Okay.</p> <p>16 BY MR. BERKOWITZ:</p> <p>17 Q Okay. Mr. Gandy, can you see</p> <p>18 that I've shared a document with you?</p> <p>19 A Yes, yes I can.</p> <p>20 Q Okay. I'm going to Zoom out</p> <p>21 just a bit, and I'm going to go ahead and</p> <p>22 mark this as Exhibit 1. I will just</p> <p>23 quickly show you the first page and the</p> <p>24 last page. It's an 86-page document,</p> <p>25 which ends with an Exhibit 1, that's your</p>	<p style="text-align: right;">Page 20</p> <p>1 J. GANDY</p> <p>2 I'm aware of this. Yeah, it was not</p> <p>3 the -- I believe it was not the rebuttal</p> <p>4 report to Mr. Hatch's.</p> <p>5 Q Yes. Do you remember preparing</p> <p>6 this report that we have on the screen</p> <p>7 right now?</p> <p>8 A Sure. Oh, yes.</p> <p>9 Q When did you prepare this</p> <p>10 report?</p> <p>11 A It was in August of last year.</p> <p>12 I believe I finished up on it in early</p> <p>13 September, based on that date, September</p> <p>14 3rd. I seem to remember it was around the</p> <p>15 first of September that I finished it.</p> <p>16 Q Okay. Do you remember the</p> <p>17 context as to why you prepared this</p> <p>18 report?</p> <p>19 A Yes. It was basically for the</p> <p>20 purpose of giving my opinion as to</p> <p>21 noninfringement of the four design patents</p> <p>22 in the case.</p> <p>23 Q Okay. And who drafted this</p> <p>24 report?</p> <p>25 A I did.</p>
<p style="text-align: right;">Page 19</p> <p>1 J. GANDY</p> <p>2 CV. And there is a signature on page 82</p> <p>3 of the document.</p> <p>4 (Exhibit 1 was marked for</p> <p>5 identification.)</p> <p>6 A Sure.</p> <p>7 Q Do you see that?</p> <p>8 A Yes.</p> <p>9 Q Okay. Are you familiar with</p> <p>10 this document?</p> <p>11 A Yes, I am.</p> <p>12 Q And what is this document?</p> <p>13 A It's my rebuttal report on</p> <p>14 noninfringement, rebutting Mr. Hatch's</p> <p>15 report.</p> <p>16 Q I actually don't think it is. I</p> <p>17 think this is a report, a document dated</p> <p>18 September 23, 2021, and I'll represent</p> <p>19 that this was served on us again on August</p> <p>20 16th of 2022 as an opening report. Maybe</p> <p>21 you want to take a few minutes and just</p> <p>22 scroll through. I can start at the top</p> <p>23 and make sure you're familiar with this</p> <p>24 document. Is that all right?</p> <p>25 A Sure, that's fine. Okay. Yeah,</p>	<p style="text-align: right;">Page 21</p> <p>1 J. GANDY</p> <p>2 Q Okay. Did you draft the report</p> <p>3 in its entirety?</p> <p>4 A Yes, I did.</p> <p>5 Q What was your process for</p> <p>6 drafting the report?</p> <p>7 A Initially just reviewing the</p> <p>8 documents that Mr. Cheng had sent to me</p> <p>9 for the purpose of understanding what the</p> <p>10 case was about and then sending me</p> <p>11 photographs of the alleged infringing</p> <p>12 designs, hoverboard designs. Once I had</p> <p>13 all of those and then was able to</p> <p>14 formulate an opinion, I began to write a</p> <p>15 report.</p> <p>16 Q Okay. You mentioned that you</p> <p>17 had received some documents from counsel.</p> <p>18 Do you recall what those documents were?</p> <p>19 A I think they're listed on there.</p> <p>20 I have in front of me, if you want, I can</p> <p>21 take a look at my report where I've listed</p> <p>22 what I did look at. Obviously, I looked</p> <p>23 at the four design patents. I looked at</p> <p>24 all of the alleged infringing devices. I</p> <p>25 believe I looked at the defendants' motion</p>

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<p style="text-align: right;">Page 22</p> <p>1 J. GANDY</p> <p>2 for summary judgment.</p> <p>3 Q Okay.</p> <p>4 A And then, obviously, I have it</p> <p>5 on there that I saw, I did look at</p> <p>6 Mr. Hatch's expert report.</p> <p>7 Q Okay. We'll circle back to that</p> <p>8 a little bit later. Did anybody help you</p> <p>9 prepare the report?</p> <p>10 A No.</p> <p>11 Q Did you base the report in any</p> <p>12 way on any prior expert reports?</p> <p>13 A No, no. When you're saying "any</p> <p>14 prior expert reports," are you talking</p> <p>15 about his particular subject matter,</p> <p>16 hoverboards?</p> <p>17 Q Good question. No, I was</p> <p>18 actually asking about any prior expert</p> <p>19 reports that you prepared for other cases?</p> <p>20 A I may have used some of the</p> <p>21 language about my background and what my</p> <p>22 expertise is, and my understanding of the</p> <p>23 law.</p> <p>24 Q Got it. So I note there are</p> <p>25 several reports and declarations that were</p>	<p style="text-align: right;">Page 24</p> <p>1 J. GANDY</p> <p>2 A I've updated it as far as any of</p> <p>3 the cases that I've been involved in, yes.</p> <p>4 Q Okay. Do you recall the last</p> <p>5 time that you updated the CV?</p> <p>6 A Whatever the last case that I</p> <p>7 was involved in, that would be the last</p> <p>8 time I updated it.</p> <p>9 Q Okay. Besides this particular</p> <p>10 matter between plaintiffs and defendants,</p> <p>11 are you providing expert services in any</p> <p>12 other cases?</p> <p>13 A You mean, have I currently been</p> <p>14 retained in other cases?</p> <p>15 Q Yes.</p> <p>16 A At this time?</p> <p>17 Q Yes, sir.</p> <p>18 A Yes, I've been retained in</p> <p>19 another case that doesn't involve anything</p> <p>20 like this case. But I've been retained in</p> <p>21 another case, yes.</p> <p>22 Q Okay. So I guess let's step</p> <p>23 through your education and background, and</p> <p>24 then we can talk about your testifying</p> <p>25 experience and make sure it's all up-to-</p>
<p style="text-align: right;">Page 23</p> <p>1 J. GANDY</p> <p>2 prepared in these cases. If it's all</p> <p>3 right, I just want to refer to this</p> <p>4 document that we've marked as Exhibit 1 as</p> <p>5 your report, your opening report. Is that</p> <p>6 all right with you?</p> <p>7 A Sure. That's fine.</p> <p>8 Q I want to just go all the way to</p> <p>9 the end to your CV. We'll start there</p> <p>10 talking about your background, if that's</p> <p>11 all right.</p> <p>12 A Sure. That's fine.</p> <p>13 Q Okay. So we're now looking at</p> <p>14 Exhibit 1 of we've marked as Exhibit 1,</p> <p>15 Mr. Gandy's opening report, and what</p> <p>16 appears to be his CV. Is that correct?</p> <p>17 A Yes, that's correct.</p> <p>18 Q When did you prepare this CV?</p> <p>19 A I prepared this CV not long</p> <p>20 after I retired from the patent office,</p> <p>21 knowing that I was going to, I was</p> <p>22 interested in doing expert witness work</p> <p>23 and consulting work in design patents. So</p> <p>24 I prepared my CV back in 2005.</p> <p>25 Q Have you updated it since then?</p>	<p style="text-align: right;">Page 25</p> <p>1 J. GANDY</p> <p>2 date.</p> <p>3 THE REPORTER: Counsel, if I could</p> <p>4 interrupt just for one moment. I have</p> <p>5 someone trying to enter in. Queena Zhang.</p> <p>6 MR. BERKOWITZ: It's okay.</p> <p>7 MR. CHENG: Yes. She is with us. If</p> <p>8 you can get her admitted to the session,</p> <p>9 it would be good. Thank you.</p> <p>10 MR. BERKOWITZ: All right. Thank</p> <p>11 you.</p> <p>12 BY MR. BERKOWITZ:</p> <p>13 Q So let's start with your college</p> <p>14 education. It says here you attended</p> <p>15 Temple University. Is that correct?</p> <p>16 A That's correct.</p> <p>17 Q And you received a bachelor of</p> <p>18 science in architectural design</p> <p>19 technology. Is that right?</p> <p>20 A That's correct.</p> <p>21 Q Can you tell us a little bit</p> <p>22 about what type of course work is involved</p> <p>23 in architectural design technology degree?</p> <p>24 A Are you asking me what kind of</p> <p>25 courses I took while I was in college?</p>

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<p style="text-align: right;">Page 26</p> <p>1 J. GANDY</p> <p>2 Q What kind of, well, tell me a</p> <p>3 little bit more about the architectural</p> <p>4 design technology degree and what that --</p> <p>5 in order to obtain that degree, what type</p> <p>6 of course work is required?</p> <p>7 A Well, obviously, engineering</p> <p>8 classes, physics classes, obviously</p> <p>9 architectural design classes, classes like</p> <p>10 perspective and rendering in being about</p> <p>11 to draw renderings and perspectives.</p> <p>12 Urban design, calculus. Again, most of</p> <p>13 the engineering and science courses along</p> <p>14 with the actual architectural courses.</p> <p>15 Q Any product design course work?</p> <p>16 A No, not at that time.</p> <p>17 Q So you graduated from Temple in</p> <p>18 1972; is that correct?</p> <p>19 A That's correct.</p> <p>20 Q And following your graduation</p> <p>21 you went straight to working at the patent</p> <p>22 office?</p> <p>23 A That's correct.</p> <p>24 Q And I will start there with your</p> <p>25 first position at the patent office. And</p>	<p style="text-align: right;">Page 28</p> <p>1 J. GANDY</p> <p>2 was transferred over there, I primarily</p> <p>3 worked in the area of transportation, D12.</p> <p>4 I also worked in the area of agricultural</p> <p>5 vehicles. I worked in the area of</p> <p>6 hardware, D8. And I also worked in the</p> <p>7 area of automotive engine parts.</p> <p>8 Q I don't want to interrupt you,</p> <p>9 but I believe you said December of 2002 to</p> <p>10 2003. I'm assuming that's not what you</p> <p>11 meant.</p> <p>12 A Well, December of 2002, January</p> <p>13 2003. I don't remember exactly when. I</p> <p>14 was only in the office about six months</p> <p>15 when that happened.</p> <p>16 Q What I'm saying is, did you mean</p> <p>17 1972 to 1973?</p> <p>18 A Yes. 1972 to 1973. Yes,</p> <p>19 correct.</p> <p>20 Q Okay. And when you were working</p> <p>21 in the class D12, handling class D12</p> <p>22 applications, can you give us some more</p> <p>23 specifics as to what kind of products you</p> <p>24 were seeing?</p> <p>25 A I worked in the entire area of</p>
<p style="text-align: right;">Page 27</p> <p>1 J. GANDY</p> <p>2 that was in 1972; is that right?</p> <p>3 A That's correct, yes.</p> <p>4 Q Okay. So you started as a</p> <p>5 design patent examiner; is that right?</p> <p>6 A That's correct.</p> <p>7 Q And in your own words, what kind</p> <p>8 of patents were you examining when you</p> <p>9 first started in 1972?</p> <p>10 A When I first started, actually I</p> <p>11 was in the area of furnishings, like</p> <p>12 furniture design. The art unit I came</p> <p>13 into in June of 1972 basically had fine</p> <p>14 arts type work, and like I said, I started</p> <p>15 working in D6, which is furnishings,</p> <p>16 mostly furniture.</p> <p>17 In I believe it was December or</p> <p>18 January of 2002-2003, I was transferred to</p> <p>19 the other design art unit in the</p> <p>20 technology center because there was a</p> <p>21 conflict of an examiner who had been</p> <p>22 hired. His brother was in the same art</p> <p>23 unit, and they couldn't do that. So I was</p> <p>24 transferred into what was at that time</p> <p>25 292. Or -- I'm sorry -- 291. And when I</p>	<p style="text-align: right;">Page 29</p> <p>1 J. GANDY</p> <p>2 land transportation, so I worked on</p> <p>3 anything that would be transportation on</p> <p>4 land, like snowmobiles, sleds, bicycles,</p> <p>5 motorcycles, obviously automobiles,</p> <p>6 trucks.</p> <p>7 Q Got it. So you were</p> <p>8 initially -- when you first entered the</p> <p>9 patent office, what was your title?</p> <p>10 A I was an assistant design patent</p> <p>11 examiner.</p> <p>12 Q And at some point, did your</p> <p>13 title change?</p> <p>14 A Yes. The process at the patent</p> <p>15 office for examiners, both design and</p> <p>16 utility, is you come in as an assistant at</p> <p>17 whatever grade you're hired at, and it</p> <p>18 normally takes about six or seven years</p> <p>19 until you have a -- if your work is</p> <p>20 sufficient, adequate -- you have an</p> <p>21 opportunity to be promoted at the end of</p> <p>22 every year.</p> <p>23 Then you get to a point where</p> <p>24 you can, what they call a partial</p> <p>25 signatory review program and then a full</p>

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<p style="text-align: right;">Page 30</p> <p>1 J. GANDY</p> <p>2 signatory review program.</p> <p>3 The full signatory review</p> <p>4 program is a six-month program. At the</p> <p>5 end of the six months, supervisors review</p> <p>6 your work and determine whether you have</p> <p>7 adequately made the proper determinations</p> <p>8 on patentability, and if you have, then</p> <p>9 you be promoted to what's called a primary</p> <p>10 examiner. At that point, you have full</p> <p>11 signatory authority to make all decisions</p> <p>12 on patentability.</p> <p>13 Q Understood. It says here, "In</p> <p>14 1979, I was promoted to primary examiner</p> <p>15 and granted full signatory authority."</p> <p>16 A That's correct.</p> <p>17 Q So that's the correct year,</p> <p>18 1979?</p> <p>19 A Yes.</p> <p>20 Q And is it correct that you</p> <p>21 remained as a primary patent examiner all</p> <p>22 the way up through 1996?</p> <p>23 A That's correct, yes.</p> <p>24 Q And between 1979 and 1996, did</p> <p>25 your responsibilities or role change at</p>	<p style="text-align: right;">Page 32</p> <p>1 J. GANDY</p> <p>2 A That's correct.</p> <p>3 Q Okay. And how do your</p> <p>4 responsibilities change from a primary</p> <p>5 examiner to a supervisory patent examiner?</p> <p>6 A Well, as a supervisor patent</p> <p>7 examiner, you're the supervisor of an art</p> <p>8 unit that can consist of anywhere from</p> <p>9 about 9 to 12 examiners, and you are</p> <p>10 responsible for those examiners' work.</p> <p>11 And at the end of the fiscal year, you're</p> <p>12 required to do a review and recommendation</p> <p>13 as to whether their work is satisfactory</p> <p>14 or whether it's commendable or whether</p> <p>15 it's outstanding or whether it's</p> <p>16 unsatisfactory.</p> <p>17 Q As a supervisory patent</p> <p>18 examiner, are you still independently</p> <p>19 reviewing design patents, design</p> <p>20 applications?</p> <p>21 A Once as a supervisor, I no</p> <p>22 longer have design patent applications</p> <p>23 that are assigned to me for the purpose of</p> <p>24 examination. I'm examining the examiners,</p> <p>25 assistant examiners, at that point. I'm</p>
<p style="text-align: right;">Page 31</p> <p>1 J. GANDY</p> <p>2 all?</p> <p>3 A As a primary examiner, I mean,</p> <p>4 when I was, at times I would act as the</p> <p>5 supervisor for the art unit when the</p> <p>6 supervisor was away. I was, I trained new</p> <p>7 examiners that came in and reviewed their</p> <p>8 work and made recommendations to the</p> <p>9 supervisor when they were eligible for</p> <p>10 promotion.</p> <p>11 Q Okay. And did you continue to</p> <p>12 review patents in the same classes that we</p> <p>13 discussed?</p> <p>14 A Yes. Yes. At times, at the</p> <p>15 end, towards the end of the fiscal year,</p> <p>16 because there were issues of backlogs of</p> <p>17 cases, I was asked to work in different</p> <p>18 art areas to help move cases along. So</p> <p>19 I've worked in -- I think I've indicated,</p> <p>20 may have indicated in my CV -- I've worked</p> <p>21 in pretty much every design class there</p> <p>22 is.</p> <p>23 Q Okay. And 1996 comes about, and</p> <p>24 you are promoted to a supervisory patent</p> <p>25 examiner? Is that correct?</p>	<p style="text-align: right;">Page 33</p> <p>1 J. GANDY</p> <p>2 reviewing all of their work and signing</p> <p>3 off on their actions if they're correct.</p> <p>4 Q Understood. So your time period</p> <p>5 at the patent office for examining</p> <p>6 applications on your own was from 1972 to</p> <p>7 1996; is that fair?</p> <p>8 A That's correct, yes.</p> <p>9 Q Okay. And you mentioned during</p> <p>10 the earlier period in the supervisor</p> <p>11 training junior examiners?</p> <p>12 A That's correct. Yes.</p> <p>13 Q Can you tell us a little bit</p> <p>14 about how you go about, I guess, training</p> <p>15 a new patent examiner?</p> <p>16 A Well, basically you're training</p> <p>17 them with all of the, on all of the</p> <p>18 elements that they're expected to be able</p> <p>19 to perform as an examiner. And that</p> <p>20 includes examining applications, that</p> <p>21 includes their office actions. But as far</p> <p>22 as their production goes -- because every</p> <p>23 examiner has production. That's based in</p> <p>24 strictly the supervisor's responsibility.</p> <p>25 Q Are there any guidelines that</p>

<p style="text-align: right;">Page 34</p> <p>1 J. GANDY</p> <p>2 the examiners have to follow when they're</p> <p>3 examining a design patent application?</p> <p>4 A Well, yeah. Obviously, they</p> <p>5 have to examine the specification, make</p> <p>6 sure that the specification is accurate</p> <p>7 with respect to the drawings. They have</p> <p>8 to review the drawings to make sure that</p> <p>9 all the views are consistent with each</p> <p>10 other so they meet the requirements of</p> <p>11 definiteness and enablement under</p> <p>12 35 U.S.C. 112.</p> <p>13 They obviously when they're</p> <p>14 looking at prior art, have to be able to</p> <p>15 determine whether the prior art that</p> <p>16 they've found, rendered a claim obvious or</p> <p>17 anticipated, or whether the claim would be</p> <p>18 allowable over that prior art.</p> <p>19 Q Did you train new examiners in</p> <p>20 patent searching?</p> <p>21 A I'm sorry, did I train them in</p> <p>22 searching?</p> <p>23 Q Yes, sir.</p> <p>24 A Yeah. I mean, I would have to</p> <p>25 review, I would -- until they became</p>	<p style="text-align: right;">Page 36</p> <p>1 J. GANDY</p> <p>2 Chapter 1500, is there any other written</p> <p>3 policies or guidelines that the examiner</p> <p>4 would follow?</p> <p>5 A Well, there's the rules that</p> <p>6 apply to design patents that are in the</p> <p>7 Code of Federal Regulations. And then</p> <p>8 there are the statutes that they have to</p> <p>9 be familiar with what the particular</p> <p>10 sections of the statute are that apply to</p> <p>11 design patents.</p> <p>12 Q Okay. So going back to your CV,</p> <p>13 you were a supervisory patent examiner</p> <p>14 from 1996 to 1998; is that correct?</p> <p>15 A That's correct, yes.</p> <p>16 Q And from there, you were</p> <p>17 elevated to be the design patent practice</p> <p>18 specialist; is that correct?</p> <p>19 A That's correct, yes.</p> <p>20 Q Okay. And you were in that role</p> <p>21 from 1998 to 2005; is that right?</p> <p>22 A That's correct, yes.</p> <p>23 Q And how did your, I guess, job</p> <p>24 responsibilities change as a design patent</p> <p>25 practice specialist?</p>
<p style="text-align: right;">Page 35</p> <p>1 J. GANDY</p> <p>2 familiar with the areas to search, I</p> <p>3 would, you know, give them, you know, the</p> <p>4 areas that would be required to search,</p> <p>5 depending on what the subject matter was.</p> <p>6 Q Okay.</p> <p>7 A They learn very quickly, because</p> <p>8 they normally will be assigned to</p> <p>9 particular art areas, and they learn very</p> <p>10 quickly as to where the actual class and</p> <p>11 subclass searching as well as potential</p> <p>12 publications, where they would need to</p> <p>13 search.</p> <p>14 Q Is there any, I guess, written</p> <p>15 guidelines or policies that the examiner</p> <p>16 would follow in reviewing a new</p> <p>17 application?</p> <p>18 A Well, I mean, the</p> <p>19 Manual of Patent Examining Procedure,</p> <p>20 Chapter 1500, is on design patents. So</p> <p>21 that is where they need to familiarize</p> <p>22 themselves with what the rules and what</p> <p>23 the proper statutes are to be applied in</p> <p>24 examining design patent applications.</p> <p>25 Q But beyond the MPEP,</p>	<p style="text-align: right;">Page 37</p> <p>1 J. GANDY</p> <p>2 A Well, I no longer had the</p> <p>3 responsibility of any examiners as a</p> <p>4 supervisor in an art unit. As the</p> <p>5 practice specialist, I was mainly -- the</p> <p>6 practice specialist position basically</p> <p>7 came into being based on a program that</p> <p>8 the patent office had initiated. Which</p> <p>9 was an in-process review program, in which</p> <p>10 practice specialists would review the</p> <p>11 office actions of all examiners in the</p> <p>12 entire technology center to determine</p> <p>13 whether the actions that they had taken</p> <p>14 were correct. I would have to review</p> <p>15 those applications and then prepare a</p> <p>16 report on all of the elements that would</p> <p>17 be required for the examiner to do in each</p> <p>18 of these cases.</p> <p>19 I also was in charge of training</p> <p>20 all new examiners that were, that came</p> <p>21 into the office. And then I was</p> <p>22 responsible for continued education</p> <p>23 training for all design patent examiners</p> <p>24 in the technology center. I was in charge</p> <p>25 of reviewing all of the decisions that</p>

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<p style="text-align: right;">Page 38</p> <p>1 J. GANDY</p> <p>2 were coming back from the board of appeals</p> <p>3 and the court of appeals for the federal</p> <p>4 circuit, to determine whether there were</p> <p>5 any issues that needed to be addressed.</p> <p>6 I was in charge of preparing the</p> <p>7 design patent examiner supplemental</p> <p>8 training guide, which was strictly a</p> <p>9 training material that was for design</p> <p>10 patent examiners.</p> <p>11 Q Okay. The design examiners</p> <p>12 supplemental training guide, was that a</p> <p>13 publicly issued document, or was that an</p> <p>14 internal document.</p> <p>15 A No. No, it was an in-office</p> <p>16 document. All of the materials that I</p> <p>17 would prepare for that particular document</p> <p>18 had to go through the office of the</p> <p>19 assistant commissioner on policy and</p> <p>20 procedure to make sure everything that I</p> <p>21 was indicating as far as dealing with</p> <p>22 different issues under the statutes or</p> <p>23 under the rules were correct.</p> <p>24 Q Okay. So after 2005, did you</p> <p>25 retire from the patent office?</p>	<p style="text-align: right;">Page 40</p> <p>1 J. GANDY</p> <p>2 to file with the patent office, and I was</p> <p>3 contacted on occasions by law firms,</p> <p>4 knowing that I was a retired design patent</p> <p>5 examiner and was interested in doing</p> <p>6 expert witness work.</p> <p>7 So I would get contacted from</p> <p>8 time to time by law firms that had design</p> <p>9 patents that were either in litigation or</p> <p>10 were the defendants in actions that were</p> <p>11 being taken, based on design patents.</p> <p>12 Q Okay. So let's break that down.</p> <p>13 It sounds like at least a portion of the</p> <p>14 time, you were doing consulting work for</p> <p>15 law firms; is that fair?</p> <p>16 A I wasn't, I mean, I wasn't</p> <p>17 retained by them, but I was -- there were</p> <p>18 some design patent agents that had</p> <p>19 contacted me while I was at the patent</p> <p>20 office about design patent practice, knew</p> <p>21 I was retiring and were interested in</p> <p>22 having me review design patent</p> <p>23 applications that they were going to file</p> <p>24 with the patent office to make sure that</p> <p>25 they were in proper order.</p>
<p style="text-align: right;">Page 39</p> <p>1 J. GANDY</p> <p>2 A Yes, I retired in 2005, yes.</p> <p>3 Q Okay. And so your career at the</p> <p>4 patent office spanned 1972 to 2005; is</p> <p>5 that right?</p> <p>6 A That's correct, yes.</p> <p>7 Q And your time personally</p> <p>8 examining patents was from 1972 to 1996;</p> <p>9 is that fair?</p> <p>10 A That's correct, yes.</p> <p>11 Q Okay. And during your time at</p> <p>12 the patent office, were you ever</p> <p>13 performing noninfringement analysis or</p> <p>14 infringement analysis?</p> <p>15 A No. That's not an issue that</p> <p>16 is, is, that the patent office is there</p> <p>17 for.</p> <p>18 Q Okay. And after 2005 when you</p> <p>19 retired from the USPTO, what did you do</p> <p>20 next?</p> <p>21 A Well, after I retired, I again</p> <p>22 prepared my CV. I had some patent agents</p> <p>23 and attorneys that knew I was retiring and</p> <p>24 wanted to rely on me for reviewing design</p> <p>25 patent applications that they were going</p>	<p style="text-align: right;">Page 41</p> <p>1 J. GANDY</p> <p>2 Q Okay. So looking at your CV,</p> <p>3 there's a heading here, it says "Design</p> <p>4 Patent Consulting." Do you see that?</p> <p>5 A Yes.</p> <p>6 Q Can you see me mouse?</p> <p>7 A Sure.</p> <p>8 Q Okay. That'll make this easier.</p> <p>9 Great. So this first sentence under that</p> <p>10 heading, which I've just attempted to</p> <p>11 highlight, it says, "Since retiring from</p> <p>12 the USPTO, I have on occasion counseled</p> <p>13 patent attorneys and agents in their</p> <p>14 filings of design patent applications at</p> <p>15 the United States Patent and Trademark</p> <p>16 Office." Do you see that?</p> <p>17 A Yes.</p> <p>18 Q Okay. So that was more informal</p> <p>19 assistance?</p> <p>20 A Yes. Yes. It was just merely</p> <p>21 where I would review the applications that</p> <p>22 they had prepared to make sure that they</p> <p>23 were in all the proper formal matters.</p> <p>24 And it involved reviewing the drawings,</p> <p>25 making sure they were consistent, you</p>

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<p style="text-align: right;">Page 42</p> <p>1 J. GANDY</p> <p>2 know, for purposes of definiteness and</p> <p>3 enablement.</p> <p>4 Q Okay. You weren't officially</p> <p>5 working for any of these law firms in</p> <p>6 particular?</p> <p>7 A No, no. No, I have never --</p> <p>8 since I've retired, I've never actually</p> <p>9 been retained as an employee of any law</p> <p>10 firm.</p> <p>11 Q Understood. And then if we keep</p> <p>12 reading in your CV, it says, "I have also</p> <p>13 prepared expert reports and testified in a</p> <p>14 deposition and at trial as an expert</p> <p>15 witness in the following matters." Is</p> <p>16 that right?</p> <p>17 A That's correct, yes.</p> <p>18 Q Okay. And we'll go through</p> <p>19 them. There's a list of six different</p> <p>20 matters that follow. Do you see that?</p> <p>21 A Yes. Sure.</p> <p>22 Q Is this list up to date?</p> <p>23 A Yes, it is.</p> <p>24 Q So this includes, does this</p> <p>25 include all your current engagements?</p>	<p style="text-align: right;">Page 44</p> <p>1 J. GANDY</p> <p>2 attorneys who were representing Ford.</p> <p>3 There was a series of design patents on</p> <p>4 the Ford Mustang -- I believe it was the</p> <p>5 2005 Ford Mustang -- that were being</p> <p>6 challenged as being indefinite and</p> <p>7 nonenabling. And I prepared reports on</p> <p>8 that, the drawings that I considered to be</p> <p>9 adequate and were not indefinite or</p> <p>10 nonenabling.</p> <p>11 Q Okay. Besides enablement and</p> <p>12 definiteness, was there any other areas of</p> <p>13 patent law that you testified in that</p> <p>14 case?</p> <p>15 A No, no.</p> <p>16 Q Okay. And do you recall the</p> <p>17 outcome of that case?</p> <p>18 A Yes. The defendant wound up</p> <p>19 settling, and Ford entered into a</p> <p>20 licensing agreement with the defendants to</p> <p>21 make after-market panels. Body panels.</p> <p>22 Basically, crash panels, if a car gets in</p> <p>23 an accident.</p> <p>24 Q And did you end up testifying at</p> <p>25 a hearing in that case?</p>
<p style="text-align: right;">Page 43</p> <p>1 J. GANDY</p> <p>2 A No, no. I normally only add a</p> <p>3 case to my CV once the work is done,</p> <p>4 because I don't know how many reports I'll</p> <p>5 have to do or when I'll have to give a</p> <p>6 deposition or testify at trial. So I</p> <p>7 normally wait until after my work being</p> <p>8 retained as an expert is finished.</p> <p>9 Q Understood. Just to clarify,</p> <p>10 are there any other matters in which</p> <p>11 you've already submitted an expert report?</p> <p>12 A No, no.</p> <p>13 Q That's fine. Okay. So just if</p> <p>14 we could quickly go through the -- the</p> <p>15 first matter listed here says, "Complaint</p> <p>16 of Ford Global Technologies, LLC." You</p> <p>17 see that?</p> <p>18 A Yes.</p> <p>19 Q And is that an ITC matter?</p> <p>20 A Yes, it was. Yeah.</p> <p>21 Q Okay. What was your role in</p> <p>22 that case?</p> <p>23 A I was retained in that case</p> <p>24 because the patents -- I was retained on</p> <p>25 behalf of, representing, you know, the</p>	<p style="text-align: right;">Page 45</p> <p>1 J. GANDY</p> <p>2 A No, no.</p> <p>3 Q Were you deposed in that case?</p> <p>4 A No, I was not.</p> <p>5 Q Okay. So after you prepared the</p> <p>6 expert report, the case was resolved? Is</p> <p>7 that fair?</p> <p>8 A Yes, yes.</p> <p>9 Q Okay. All right, moving on to</p> <p>10 the next case, Magnadyne Corp. v.</p> <p>11 Best Buy. Do you see that?</p> <p>12 A Yes, yes.</p> <p>13 Q And what was your role in that</p> <p>14 case?</p> <p>15 A That was, basically my role was</p> <p>16 to prepare a report indicating that the</p> <p>17 design patent was patentable under 102 and</p> <p>18 103, and that the alleged infringing</p> <p>19 device was infringing.</p> <p>20 Q So is it fair to say you</p> <p>21 prepared a report on validity and</p> <p>22 infringement?</p> <p>23 A Yes, it was validity. That's</p> <p>24 what it was. Validity, yes.</p> <p>25 Q Was it infringement as well?</p>

<p style="text-align: right;">Page 46</p> <p>1 J. GANDY</p> <p>2 A Yeah, I believe it was. To the</p> <p>3 best of my recollection, I also indicated</p> <p>4 that the alleged infringing device was</p> <p>5 infringing.</p> <p>6 Q It says here you gave a</p> <p>7 deposition on expert report.</p> <p>8 A Yes, I did.</p> <p>9 Q Okay. And did you testify at</p> <p>10 trial in that case?</p> <p>11 A No.</p> <p>12 Q Did the case go to trial?</p> <p>13 A No. It was settled.</p> <p>14 Q Okay. All right. Moving to the</p> <p>15 next one, Weber-Stephen Products v.</p> <p>16 Sears Holdings Corp. Do you see that?</p> <p>17 A Yes.</p> <p>18 Q And it says here that you</p> <p>19 prepared an expert report on invalidity as</p> <p>20 well as nonenabling. Let me just sum it</p> <p>21 up. It says you prepared a report on</p> <p>22 invalidity, issue of enablement,</p> <p>23 indefiniteness, and the written</p> <p>24 description requirement. Is that fair?</p> <p>25 A That's correct, yes.</p>	<p style="text-align: right;">Page 48</p> <p>1 J. GANDY</p> <p>2 settle.</p> <p>3 Q Okay. So the case settled after</p> <p>4 summary judgment?</p> <p>5 A Yes.</p> <p>6 Q So you were only deposed in the</p> <p>7 case? You did not testify at trial?</p> <p>8 A That's correct, yes.</p> <p>9 Q Okay. Moving on to the next</p> <p>10 case. It's Trinity Manufacturing,</p> <p>11 Campbell Soup Company and Campbell Sales</p> <p>12 Company v. Gamon Plus. Do you see that?</p> <p>13 A Yes.</p> <p>14 Q What type of case was that?</p> <p>15 A That was actually on, I believe</p> <p>16 it was five design patents directed to --</p> <p>17 trying to think of what the correct term</p> <p>18 would be. They were basically for the</p> <p>19 holders for Campbell Soup Cans or just any</p> <p>20 soup cans that would be in supermarkets.</p> <p>21 And it involved a series of design patents</p> <p>22 on certain portions of the retainer.</p> <p>23 These were cases that were before the</p> <p>24 patent office for inter-parties reviews</p> <p>25 before the patent trial board.</p>
<p style="text-align: right;">Page 47</p> <p>1 J. GANDY</p> <p>2 Q Okay. And then it says that you</p> <p>3 separately prepared an expert report on</p> <p>4 noninfringement to design patents?</p> <p>5 A That's correct.</p> <p>6 Q Is that right?</p> <p>7 A That's correct.</p> <p>8 Q Okay. Were those two separate</p> <p>9 reports that you prepared in that case?</p> <p>10 A Yes, they were separate reports,</p> <p>11 yes.</p> <p>12 Q So you were representing the --</p> <p>13 A I was representing Sears, the</p> <p>14 defendant. That's correct.</p> <p>15 Q And what was the outcome in that</p> <p>16 case?</p> <p>17 A There were two design patents</p> <p>18 involved. One was on an entire grill; the</p> <p>19 other was on just the shroud, the cover</p> <p>20 for the grill. The cover was -- it was</p> <p>21 determined that the cover was not</p> <p>22 infringing. It was a summary judgment.</p> <p>23 The judge did not grant the summary</p> <p>24 judgment to Sears. Sears decided not to</p> <p>25 go forward to trial. They decided to just</p>	<p style="text-align: right;">Page 49</p> <p>1 J. GANDY</p> <p>2 Q And you were representing which</p> <p>3 party?</p> <p>4 A The defendant. I was</p> <p>5 representing Campbell, the defendants.</p> <p>6 Q When you say "the defendants,"</p> <p>7 you mean, were they the parties bringing</p> <p>8 the requests for review? Or --</p> <p>9 A Yeah. They were the parties</p> <p>10 bringing the request for inter-parties</p> <p>11 review.</p> <p>12 Q So your declaration would be</p> <p>13 supporting the invalidity of these</p> <p>14 patents; is that fair?</p> <p>15 A That's correct, yes.</p> <p>16 Q Okay. And you were deposed in</p> <p>17 those IPRs?</p> <p>18 A That's correct, yes.</p> <p>19 Q Okay. And do you recall the</p> <p>20 outcome of the IPRs?</p> <p>21 A I know four of the design</p> <p>22 patents were invalidated. I think the one</p> <p>23 is still, I think has still not been</p> <p>24 settled.</p> <p>25 Q Okay. Moving on to this case,</p>

<p style="text-align: right;">Page 50</p> <p>1 J. GANDY</p> <p>2 Nite Glow Industries, I Did It, Inc., and</p> <p>3 Marni Markell Hurwitz v. Central Garden &</p> <p>4 Pet Company and Four Paws Pet Company. Do</p> <p>5 you see that?</p> <p>6 A Yes.</p> <p>7 Q Same questions. What type of</p> <p>8 issues were involved in there?</p> <p>9 A This was a -- I was asked to</p> <p>10 prepare a report on expedited examination</p> <p>11 process in this case. The Nite Glow --</p> <p>12 well, let me say, Marni Markell was an</p> <p>13 individual. She holds multiple number of</p> <p>14 utility patents. And she came to Nite</p> <p>15 Glow with an idea for, well, she had a</p> <p>16 utility patent for basically dispensing</p> <p>17 tick and flea, you know, into dogs and</p> <p>18 cats.</p> <p>19 Nite Glow filed design patent</p> <p>20 applications off of her utility patent</p> <p>21 without her knowledge. And so she brought</p> <p>22 suit against them. They were issued the</p> <p>23 design patents without her knowledge.</p> <p>24 So the suit was based on, she</p> <p>25 had a written secrecy agreement with</p>	<p style="text-align: right;">Page 52</p> <p>1 J. GANDY</p> <p>2 on several occasions because she is very</p> <p>3 frustrated about the legal process that is</p> <p>4 going on. So that's the only way I know</p> <p>5 that there are still some legal issues</p> <p>6 being involved in that case.</p> <p>7 Q Okay. And the last one is the,</p> <p>8 I believe it's LKQ Corporation and</p> <p>9 Keystone Automotive v. GM Global</p> <p>10 Technology Operations. Do you see that?</p> <p>11 A Yes.</p> <p>12 Q And that's another inter-parties</p> <p>13 suit?</p> <p>14 A Inter-parties, yes. It was</p> <p>15 inter-parties, and post grant reviews.</p> <p>16 Q So there, too, you were</p> <p>17 representing which side?</p> <p>18 A LKQ. LKQ.</p> <p>19 Q Okay. So you were providing</p> <p>20 declarations in support of invalidity? Is</p> <p>21 that fair?</p> <p>22 A That's correct, yes.</p> <p>23 Q So just to sum up the, your</p> <p>24 expert -- let me strike that. To sum up</p> <p>25 your expert experience, you've had a total</p>
<p style="text-align: right;">Page 51</p> <p>1 J. GANDY</p> <p>2 Nite Glow that they obviously violated.</p> <p>3 And so I was asked to prepare a</p> <p>4 report on an expedited examination,</p> <p>5 because if they had properly prepared</p> <p>6 design applications and filed them as</p> <p>7 expedited examinations, they would have</p> <p>8 received their patent much earlier. And</p> <p>9 basically, the case was for the purpose</p> <p>10 of, these patents should have been</p> <p>11 assigned to her.</p> <p>12 Q Okay. And just to confirm, you</p> <p>13 were representing which parties in this</p> <p>14 case?</p> <p>15 A Marni Markell.</p> <p>16 Q And in this case, you gave both</p> <p>17 deposition and trial testimony?</p> <p>18 A That's correct.</p> <p>19 Q Okay. And do you recall the</p> <p>20 outcome of that case?</p> <p>21 A The initial outcome is that she</p> <p>22 was awarded the decision in the case. My</p> <p>23 understanding is that there are still some</p> <p>24 legal issues going on with that. I have</p> <p>25 not, I have had some -- she has called me</p>	<p style="text-align: right;">Page 53</p> <p>1 J. GANDY</p> <p>2 of six cases, and in one case, you</p> <p>3 provided opinions with respect to</p> <p>4 infringement, and in one case, you</p> <p>5 provided opinions with respect to</p> <p>6 noninfringement. Is that fair?</p> <p>7 A That's correct, yes.</p> <p>8 Q Got it. Okay.</p> <p>9 A If you had to sum up for us,</p> <p>10 what do you believe your area of expertise</p> <p>11 is?</p> <p>12 MR. CHENG: Objection. Vague and</p> <p>13 ambiguous.</p> <p>14 A What is my area of expertise?</p> <p>15 Is that what you're asking me?</p> <p>16 Q Yes, sir.</p> <p>17 A I consider myself an expert on</p> <p>18 design patents in all areas of the subject</p> <p>19 matter.</p> <p>20 Q During your time at the patent</p> <p>21 office, did you ever review any patents</p> <p>22 relating to hoverboards?</p> <p>23 A Hoverboards didn't even exist</p> <p>24 when I retired from the patent office.</p> <p>25 Q That's true. Fair enough. Were</p>

<p style="text-align: right;">Page 54</p> <p>1 J. GANDY</p> <p>2 there -- strike that. Did you review any</p> <p>3 patents or patent applications related to</p> <p>4 self-balancing vehicles?</p> <p>5 A I can't recall offhand. I don't</p> <p>6 know, the only -- I'm trying to think of</p> <p>7 the name. I can't think of the name of</p> <p>8 the self-balancing vehicle, the first one</p> <p>9 that came out, but I was not examining at</p> <p>10 that point. I think there was a design</p> <p>11 patent application filed on that, but I</p> <p>12 was not actually examining. I was a</p> <p>13 supervisor at that point.</p> <p>14 Q Yeah. And again, I don't know</p> <p>15 what the earliest one was, but I think it</p> <p>16 was something like a Segway.</p> <p>17 A Segway. That's what I'm trying</p> <p>18 to think of. Segway. Yeah, when the</p> <p>19 Segways came out, I was, I believe there</p> <p>20 was a design patent filed on that, but at</p> <p>21 that time, again, I was a supervisor. I</p> <p>22 would've been examining it if I had still</p> <p>23 been the examiner in that art area.</p> <p>24 Q Understood. Okay. Why don't we</p> <p>25 -- yeah, we've done about an hour. Why</p>	<p style="text-align: right;">Page 56</p> <p>1 J. GANDY</p> <p>2 (Exhibit 2 was marked for</p> <p>3 identification.)</p> <p>4 A Yes.</p> <p>5 Q Okay. And do you recognize this</p> <p>6 document?</p> <p>7 A Yes, I do.</p> <p>8 Q And what do you recognize it to</p> <p>9 be?</p> <p>10 A It's the last declaration that I</p> <p>11 had prepared in rebuttal to Mr. Hatch's</p> <p>12 last report.</p> <p>13 Q Okay. When did you prepare this</p> <p>14 declaration?</p> <p>15 A It was late August, early</p> <p>16 September.</p> <p>17 Q And how does this document</p> <p>18 differ from your prior declaration that we</p> <p>19 marked as Exhibit 1?</p> <p>20 A There was one additional alleged</p> <p>21 infringing hoverboard that was identified</p> <p>22 as, I believe, group E.</p> <p>23 Q And did you address that group E</p> <p>24 hoverboard?</p> <p>25 A Yes, I did.</p>
<p style="text-align: right;">Page 55</p> <p>1 J. GANDY</p> <p>2 don't we just take five minutes before we</p> <p>3 dive into the rest of your report; okay?</p> <p>4 A Okay, sure.</p> <p>5 MR. CHENG: Can we take ten minutes?</p> <p>6 MR. BERKOWITZ: Yeah, sure. No</p> <p>7 problem.</p> <p>8 MR. CHENG: Thanks.</p> <p>9 THE REPORTER: We are off the record</p> <p>10 at 10:59 a.m.</p> <p>11 (Off the record.)</p> <p>12 THE REPORTER: All right, counsel, we</p> <p>13 are back on the record at 11:09 a.m.</p> <p>14 BY MR. BERKOWITZ:</p> <p>15 Q Okay. So I'm going to go ahead</p> <p>16 and mark a second document that I will</p> <p>17 share on the screen. Mr. Gandy, can you</p> <p>18 see that I've shared a document?</p> <p>19 A Yes.</p> <p>20 Q Great. So I'm going to mark</p> <p>21 this as Exhibit Number 2, and let me,</p> <p>22 again, just scroll quickly through this</p> <p>23 86-page document. This is the first page,</p> <p>24 the table of contents, and here is your</p> <p>25 signature at the end. Do you see that?</p>	<p style="text-align: right;">Page 57</p> <p>1 J. GANDY</p> <p>2 Q And other than provided analysis</p> <p>3 of the group E hoverboard, were there any</p> <p>4 other changes made to the report?</p> <p>5 A I think I may have added some</p> <p>6 additional language with respect to claim</p> <p>7 construction and maybe some additional</p> <p>8 language as to my opinion of Mr. Hatch's</p> <p>9 report.</p> <p>10 Q So the same questions I asked</p> <p>11 before. Did you draft this report</p> <p>12 yourself?</p> <p>13 A Yes, I did.</p> <p>14 Q And those additions that you</p> <p>15 just mentioned, did you make those changes</p> <p>16 yourself?</p> <p>17 A Yes, I did.</p> <p>18 Q Did anyone ask you to make those</p> <p>19 specific changes?</p> <p>20 A No, they did not.</p> <p>21 Q And if it's okay, I'm going to</p> <p>22 refer to this report, Exhibit Number 2, as</p> <p>23 your rebuttal report. Is that all right</p> <p>24 with you?</p> <p>25 A Yes, that's fine.</p>

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<p style="text-align: right;">Page 58</p> <p>1 J. GANDY</p> <p>2 Q Okay. So Exhibit 1 is your</p> <p>3 initial report, Exhibit Number 2 is your</p> <p>4 rebuttal report. Okay?</p> <p>5 A Okay.</p> <p>6 Q All right. So I want to, I</p> <p>7 guess, start with the list of materials,</p> <p>8 which is paragraph 4 of the report. Do</p> <p>9 you see that?</p> <p>10 A Yes.</p> <p>11 Q And other than the materials</p> <p>12 listed here, is there anything else that</p> <p>13 you relied upon in preparing this report?</p> <p>14 A No, not that I'm aware of or I</p> <p>15 recall.</p> <p>16 Q Okay. I asked the question</p> <p>17 before if you were familiar with the</p> <p>18 individual named Lance Rake, which I</p> <p>19 understand you said that you were not</p> <p>20 familiar with Mr. Rake.</p> <p>21 A No. No.</p> <p>22 Q And just to confirm -- and I</p> <p>23 apologize if I asked before -- have you</p> <p>24 reviewed any declarations or reports</p> <p>25 prepared by Mr. Rake?</p>	<p style="text-align: right;">Page 60</p> <p>1 J. GANDY</p> <p>2 Q Prior to this engagement, were</p> <p>3 you familiar with the standards for</p> <p>4 infringement of design patent?</p> <p>5 A Yes, I was.</p> <p>6 Q Okay. And how were you familiar</p> <p>7 with those standards?</p> <p>8 A Well, I'm familiar with the case</p> <p>9 law, Egyptian Goddess, that basically sets</p> <p>10 out what the proper standard is for</p> <p>11 determining infringement, based on the</p> <p>12 ordinary observer.</p> <p>13 Q And when was the</p> <p>14 Egyptian Goddess case issued?</p> <p>15 A I believe it was 2007, 2007 or</p> <p>16 2008. I know it was right in that time</p> <p>17 frame.</p> <p>18 Q Okay. I believe it was 2008,</p> <p>19 but I agree with you, it's around that</p> <p>20 time period. At that time, you had</p> <p>21 already retired from the patent office; is</p> <p>22 that right?</p> <p>23 A That's correct. Yeah.</p> <p>24 Q Okay. So during your time at</p> <p>25 the patent office, was there a -- what was</p>
<p style="text-align: right;">Page 59</p> <p>1 J. GANDY</p> <p>2 A No, I have not.</p> <p>3 Q Okay. All right. So let's jump</p> <p>4 over to paragraph 19 of your report. So</p> <p>5 I'm in Section III of the report. It's</p> <p>6 titled "Understanding of the Applicable</p> <p>7 Legal Principles." Do you see that?</p> <p>8 A Yes, I do.</p> <p>9 Q Is this a section of the report</p> <p>10 that you prepared for this case?</p> <p>11 A Yes, sure. Yeah.</p> <p>12 Q Was this section drawn from</p> <p>13 prior cases? And when I say "prior</p> <p>14 cases," I mean not relating to the parties</p> <p>15 here?</p> <p>16 A I believe so. They're very</p> <p>17 similar language, yes.</p> <p>18 Q Okay. Now looking at paragraph</p> <p>19 19, in the third sentence of the</p> <p>20 paragraph, it says, "In rendering my</p> <p>21 analysis, I have been informed by counsel</p> <p>22 for multiple defendants the legal</p> <p>23 standards for infringement of a design</p> <p>24 patent." Do you see that?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 61</p> <p>1 J. GANDY</p> <p>2 the standard for design patent</p> <p>3 infringement?</p> <p>4 A Basically, it was the</p> <p>5 Supreme Court decision, Gorham v. White.</p> <p>6 I think it was 1876. It was still the</p> <p>7 standard. Actually, I should also include</p> <p>8 in there, I think it was the -- trying to</p> <p>9 remember the specific case -- but</p> <p>10 basically, you're dealing with points of</p> <p>11 novelty. That's what the case, basically</p> <p>12 the Egyptian Goddess case eliminated the</p> <p>13 point of novelty test.</p> <p>14 Q Can you tell us a little bit</p> <p>15 about the point of novelty test?</p> <p>16 MR. CHENG: Objection, vague and</p> <p>17 ambiguous. But you may answer if you</p> <p>18 understand the question.</p> <p>19 THE WITNESS: Yeah. I remember</p> <p>20 reading -- and again, I'm trying to</p> <p>21 remember the specific parties involved in</p> <p>22 it, but I remember reading the decision</p> <p>23 that established the point of novelty test</p> <p>24 when I was an examiner. I believe it was</p> <p>25 somewhere in the early '80s when that</p>

16 (Pages 58 - 61)

<p style="text-align: right;">Page 62</p> <p>1 J. GANDY</p> <p>2 decision came down.</p> <p>3 Basically, it was saying that,</p> <p>4 you know, in addition to the ordinary</p> <p>5 observer test set out by the</p> <p>6 Gorham v. White decision, that you had to</p> <p>7 meet, in order to be considered to</p> <p>8 infringe, you had to have shown all of the</p> <p>9 points of novelty of the design patent in</p> <p>10 litigation.</p> <p>11 Q Was the points of novelty test</p> <p>12 also being applied in the patentability</p> <p>13 context?</p> <p>14 A You mean as far as determining</p> <p>15 patentability in the patent office?</p> <p>16 Q Right.</p> <p>17 A No, no.</p> <p>18 Q As a patent examiner, what was</p> <p>19 the test that you were applying to</p> <p>20 determine the patentability?</p> <p>21 A Well, it was either the</p> <p>22 anticipation or obviousness from prior art</p> <p>23 standpoint.</p> <p>24 Q Okay. But it wasn't the</p> <p>25 Egyptian Goddess test; is that fair?</p>	<p style="text-align: right;">Page 64</p> <p>1 J. GANDY</p> <p>2 be decisions that potentially came from</p> <p>3 the trial board at the patent office.</p> <p>4 Q Are there any particular</p> <p>5 decisions that you're relying upon here</p> <p>6 for these opinions?</p> <p>7 A No, no.</p> <p>8 Q Okay. And the same question,</p> <p>9 you're referring in this first sentence of</p> <p>10 paragraph 20 to "articles." Is there any</p> <p>11 particular articles that you're relying</p> <p>12 upon in connection with these opinions?</p> <p>13 A Well, I mean, it says "articles</p> <p>14 discussing design patent law principles."</p> <p>15 I mean, that would basically be the</p> <p>16 Manual of Patent Examining Procedure and</p> <p>17 the statutes.</p> <p>18 Q Okay. Is there any particular</p> <p>19 portions of the Manual of Patent Examining</p> <p>20 Procedure that are relevant to the</p> <p>21 infringement analysis that you provided</p> <p>22 here?</p> <p>23 A Not with respect to</p> <p>24 infringement, no.</p> <p>25 Q Okay. So moving on to the</p>
<p style="text-align: right;">Page 63</p> <p>1 J. GANDY</p> <p>2 A No. The Egyptian Goddess test</p> <p>3 is dealing with infringement. Which is</p> <p>4 not an issue that the patent office deals</p> <p>5 with.</p> <p>6 Q Okay. Jumping to paragraph 20</p> <p>7 of your rebuttal report, the first</p> <p>8 sentence says, "Based on my conversations</p> <p>9 with counsel for multiple defendants and</p> <p>10 my review of administrative decisions and</p> <p>11 articles discussing design patent law</p> <p>12 principles, I have the following</p> <p>13 understanding of design patent</p> <p>14 infringement." Do you see that?</p> <p>15 A Yes.</p> <p>16 Q Okay. So when you say</p> <p>17 "administrative decisions," what are you</p> <p>18 referring to?</p> <p>19 A Well, it would be decisions from</p> <p>20 the courts on infringement.</p> <p>21 Q Are those administrative</p> <p>22 decisions?</p> <p>23 A No, they're actually legal</p> <p>24 decisions. Administrative decisions, I</p> <p>25 would have to say that they're, they would</p>	<p style="text-align: right;">Page 65</p> <p>1 J. GANDY</p> <p>2 second sentence of paragraph 20 [sic], it</p> <p>3 says, "First, it is my understanding that</p> <p>4 the claim in a design patent application</p> <p>5 is directed to the entire design and not</p> <p>6 individual parts or elements thereof." Do</p> <p>7 you see that?</p> <p>8 A Yes.</p> <p>9 Q Do you believe that that is a</p> <p>10 correct summary of the law?</p> <p>11 A Yes, oh, absolutely. That's</p> <p>12 what it is for determining patentability.</p> <p>13 Q Okay. And if we continue</p> <p>14 reading, it says, "In addition, it is my</p> <p>15 understanding that the proper inquiry in</p> <p>16 determining if a patented design has been</p> <p>17 infringed is whether the accused design</p> <p>18 appropriates the claim design as a whole."</p> <p>19 Do you see that?</p> <p>20 A Yes.</p> <p>21 Q Is that sentence similar to the</p> <p>22 one we just read?</p> <p>23 A I think it's similar, yes.</p> <p>24 Q And in general, what does that</p> <p>25 sentence telling us?</p>

<p style="text-align: right;">Page 66</p> <p>1 J. GANDY</p> <p>2 A It's telling us that</p> <p>3 infringement is based on the appearance of</p> <p>4 the design as a whole.</p> <p>5 Q Okay. And if we keep reading,</p> <p>6 it says, "Further, it is my understanding</p> <p>7 that design patent infringement is</p> <p>8 determined by first construing the claim</p> <p>9 to the design and then comparing it to the</p> <p>10 design of the accused device." Do you see</p> <p>11 that?</p> <p>12 A That's correct, yes.</p> <p>13 Q Okay. So how do we construe a</p> <p>14 design patent claim?</p> <p>15 A Basically, everything that's</p> <p>16 shown in solid lines is considered to be</p> <p>17 part of the claim design. Anything that</p> <p>18 would be in broken lines is considered to</p> <p>19 be unclaimed or environment.</p> <p>20 Q Okay. And if we keep reading,</p> <p>21 it says, "It's also my understanding that</p> <p>22 in construing the claim, a design is</p> <p>23 better represented by an illustration</p> <p>24 rather than a verbal description, since</p> <p>25 any description would not likely be</p>	<p style="text-align: right;">Page 68</p> <p>1 J. GANDY</p> <p>2 Q Do you know if defendants are</p> <p>3 offering a verbal description of the claim</p> <p>4 designs in this case?</p> <p>5 MR. CHENG: Objection. Are you --</p> <p>6 well, first if it's privileged information</p> <p>7 counsel is looking for privileged</p> <p>8 information with communication with</p> <p>9 clients, then I instruct the witness, the</p> <p>10 deponent not to answer that. To the</p> <p>11 extent that the question is vague and</p> <p>12 ambiguous, maybe counsel can rephrase it.</p> <p>13 MR. BERKOWITZ: Sure.</p> <p>14 BY MR. BERKOWITZ:</p> <p>15 Q Just to clarify, I'm certainly</p> <p>16 not looking for any privileged</p> <p>17 communications that you had with your</p> <p>18 attorneys. I'm just asking the question,</p> <p>19 do you know whether the defendants have</p> <p>20 offered a verbal description of the claim</p> <p>21 designs in connection with the case?</p> <p>22 A Not that I recall.</p> <p>23 Q Okay. And in your expert</p> <p>24 report, do you provide any verbal</p> <p>25 descriptions of the claim designs?</p>
<p style="text-align: right;">Page 67</p> <p>1 J. GANDY</p> <p>2 intelligible without the illustration."</p> <p>3 Do you see that?</p> <p>4 A Yes.</p> <p>5 Q And what are you trying to say</p> <p>6 there?</p> <p>7 A What I'm trying to say is that,</p> <p>8 you -- a design claim protects the overall</p> <p>9 shape and appearance of an article of</p> <p>10 manufacture. And it would be almost</p> <p>11 impossible to describe by words the</p> <p>12 specific shape and appearance of a claim</p> <p>13 design without actually seeing a picture</p> <p>14 of it.</p> <p>15 If I had a word description --</p> <p>16 let's put it this way. If I had a word</p> <p>17 description of a claim design, I'd have to</p> <p>18 be able to draw that and look exactly what</p> <p>19 the drawings show. That is very, very</p> <p>20 unlikely.</p> <p>21 Q Do you believe it's helpful to</p> <p>22 provide a verbal description of a claim</p> <p>23 design?</p> <p>24 A I don't think so. My opinion is</p> <p>25 no.</p>	<p style="text-align: right;">Page 69</p> <p>1 J. GANDY</p> <p>2 A No. I guess the only thing I</p> <p>3 would say is that a verbal description</p> <p>4 would be just, just given a description of</p> <p>5 what the different views that, you know,</p> <p>6 comparing the alleged infringing devices</p> <p>7 to the claim design and to the closest</p> <p>8 prior art. I mean, I wouldn't consider</p> <p>9 anything I've said to be a written</p> <p>10 description. It's merely just looking at</p> <p>11 the pictures.</p> <p>12 Q Okay. I guess my question is</p> <p>13 how do you draw the line? What would you</p> <p>14 consider a verbal description of a claim</p> <p>15 design?</p> <p>16 MR. CHENG: Objection. Form.</p> <p>17 A Again, I would have to say, it</p> <p>18 would have to be a description that would</p> <p>19 be so specific to define particular shape</p> <p>20 and appearance of a claim design that I</p> <p>21 could read that description and actually</p> <p>22 draw the claim design as shown in the</p> <p>23 drawings. And again, it's my opinion that</p> <p>24 that's virtually impossible.</p> <p>25 Q Okay. And just to clarify, you</p>

<p style="text-align: right;">Page 70</p> <p>1 J. GANDY</p> <p>2 have not tried to construe the claims</p> <p>3 here, other than based on the drawings; is</p> <p>4 that fair?</p> <p>5 A That's correct.</p> <p>6 Q Okay. You mentioned the</p> <p>7 ordinary observer test earlier. Is that</p> <p>8 right?</p> <p>9 A Yes.</p> <p>10 Q What's the role of prior art, if</p> <p>11 any, in the ordinary observer test?</p> <p>12 A Well, it's my understanding,</p> <p>13 based on the Egyptian Goddess decision,</p> <p>14 that if the claim design and the alleged</p> <p>15 infringing design are not so similar, so</p> <p>16 dissimilar, that it would be necessary to</p> <p>17 look at the closest prior art in assisting</p> <p>18 in making a determination as to whether a</p> <p>19 less infringing design actually infringes</p> <p>20 the claim design.</p> <p>21 Q How do you go about determining</p> <p>22 what's the closest prior art?</p> <p>23 A Again, that's a visual</p> <p>24 determination. And I would be looking at,</p> <p>25 you know, earlier hoverboards.</p>	<p style="text-align: right;">Page 72</p> <p>1 J. GANDY</p> <p>2 Q Okay. Is that -- and just to</p> <p>3 clarify, is that something that you ever</p> <p>4 came across in your time as a patent</p> <p>5 examiner?</p> <p>6 A Not that I'm aware of.</p> <p>7 Q Okay. Did you have any</p> <p>8 experience with anyone applying that</p> <p>9 principle in design patent analysis?</p> <p>10 A What principle is that?</p> <p>11 Q The Gestalt principle.</p> <p>12 A I don't know what that is.</p> <p>13 Q Okay. I'm just going to bring</p> <p>14 up another exhibit for us for a moment.</p> <p>15 Okay. Can you see that I've brought up</p> <p>16 another document?</p> <p>17 A Okay.</p> <p>18 Q I'm going to mark as Exhibit 3 a</p> <p>19 document that is titled</p> <p>20 "Expert Declaration of Lance Rake," and I</p> <p>21 will note that it's a document consisting</p> <p>22 of 113 pages, including an Exhibit 1.</p> <p>23 Again, Mr. Gandy, can you see</p> <p>24 the document?</p> <p>25 //</p>
<p style="text-align: right;">Page 71</p> <p>1 J. GANDY</p> <p>2 Q Anything else?</p> <p>3 A That would be, I think, you</p> <p>4 know, if whatever potential earlier prior</p> <p>5 art hoverboards would be in existing at</p> <p>6 the time, that would be what I would</p> <p>7 consider to be the closest prior art.</p> <p>8 Q Is making that determination</p> <p>9 just based on your experience?</p> <p>10 A Yes, yes.</p> <p>11 Q And in performing the ordinary</p> <p>12 observer analysis, are there any</p> <p>13 scientific principles that you rely upon?</p> <p>14 A No, no.</p> <p>15 Q Are you familiar with the term</p> <p>16 "gestalt"?</p> <p>17 A Gestalt?</p> <p>18 Q Yes, sir. I can spell that for</p> <p>19 you.</p> <p>20 A No, that's fine. I'm not</p> <p>21 familiar with that term.</p> <p>22 Q Just for my own edification,</p> <p>23 it's spelled G-E-S-T-A-L-T. Are you</p> <p>24 familiar with that term?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 73</p> <p>1 J. GANDY</p> <p>2 (Exhibit 3 was marked for</p> <p>3 identification.)</p> <p>4 A Yes, I can.</p> <p>5 Q Okay. Is this a document that</p> <p>6 you've seen before?</p> <p>7 A No, I have not.</p> <p>8 Q Okay. And I'll just represent</p> <p>9 to you that this is a document that the</p> <p>10 defendants have served in this case. And</p> <p>11 I want to go ahead and ask you to scroll</p> <p>12 to paragraph 10 of this document.</p> <p>13 MR. CHENG: I will raise my</p> <p>14 objection, since neither Mr. Gandy or the</p> <p>15 counsel was given a copy of this document,</p> <p>16 and we have had no sufficient time to look</p> <p>17 through the documents, are you testifying</p> <p>18 this is one report that was provided by</p> <p>19 defendant?</p> <p>20 MR. BERKOWITZ: Yes. I will</p> <p>21 represent this is a report that was served</p> <p>22 on us by your firm on behalf of the</p> <p>23 defendants.</p> <p>24 MR. CHENG: Can you show us a date so</p> <p>25 at least we know which report you're</p>

<p style="text-align: right;">Page 74</p> <p>1 J. GANDY</p> <p>2 putting here?</p> <p>3 MR. BERKOWITZ: Absolutely. This is</p> <p>4 a document, you can see the signature is</p> <p>5 dated September 12, 2022.</p> <p>6 MR. CHENG: Okay. And I just want to</p> <p>7 caution you that give us sufficient time</p> <p>8 to look through the portion of the report</p> <p>9 if you want to read any specific part of</p> <p>10 the report.</p> <p>11 MR. BERKOWITZ: Sure.</p> <p>12 MR. CHENG: Thanks.</p> <p>13 BY MR. BERKOWITZ:</p> <p>14 Q Sure. Let's start at paragraph</p> <p>15 6 of this report. And I'll give you a</p> <p>16 moment to read through, and then I'll just</p> <p>17 ask you a question or two about it. Just</p> <p>18 let me know when you're done.</p> <p>19 A Okay, I've gone through six</p> <p>20 through eight.</p> <p>21 Q Okay. You might as well just</p> <p>22 finish reading through nine and ten, if</p> <p>23 that's all right with you.</p> <p>24 A Uh-huh, sure.</p> <p>25 Q Thanks.</p>	<p style="text-align: right;">Page 76</p> <p>1 J. GANDY</p> <p>2 first paragraph, paragraph 10, this</p> <p>3 individual, Mr. Rake, says, "I</p> <p>4 specifically selected Gestalt Perception</p> <p>5 Theory as a scientific framework for</p> <p>6 determining whether or not the design of</p> <p>7 the accused products is equivalent to that</p> <p>8 of the asserted patents." Do you see</p> <p>9 that?</p> <p>10 A Yes.</p> <p>11 Q Is that scientific framework</p> <p>12 something that you've used to train</p> <p>13 examiners?</p> <p>14 MR. CHENG: Objection, calls for a</p> <p>15 legal conclusion. Well, it's not a legal</p> <p>16 conclusion. Calls for speculation.</p> <p>17 MR. BERKOWITZ: I'm just asking about</p> <p>18 Mr. Gandy's experience.</p> <p>19 THE WITNESS: Would you repeat the</p> <p>20 question again?</p> <p>21 BY MR. BERKOWITZ:</p> <p>22 Q Sure. Is the scientific</p> <p>23 framework that's referred to here in these</p> <p>24 paragraphs, is that something that you've</p> <p>25 used to train examiners on design</p>
<p style="text-align: right;">Page 75</p> <p>1 J. GANDY</p> <p>2 A Okay.</p> <p>3 Q There's just one last paragraph</p> <p>4 in this section, paragraph 11, if you</p> <p>5 don't mind. Just take a look at that.</p> <p>6 A Okay.</p> <p>7 Q Okay. Having read paragraphs 6</p> <p>8 through 11 of Exhibit Number 3, does this</p> <p>9 give you an understanding of the Gestalt</p> <p>10 principles we're referring to?</p> <p>11 A Yeah. I mean I can generally</p> <p>12 understand what they're saying, yeah.</p> <p>13 Q Okay. And is the Gestalt</p> <p>14 principles something that you would use in</p> <p>15 patent office practice?</p> <p>16 MR. CHENG: Objection. Asked and</p> <p>17 answered.</p> <p>18 A I wouldn't necessarily say --</p> <p>19 I'm not familiar with this Gestalt</p> <p>20 principle, but I think a lot of what it</p> <p>21 says is what we do at the patent office.</p> <p>22 I mean, as far as me looking at the claim</p> <p>23 design and comparing it to the prior art.</p> <p>24 Obviously, it's a visual comparison.</p> <p>25 Q Okay. So here in, let's say</p>	<p style="text-align: right;">Page 77</p> <p>1 J. GANDY</p> <p>2 analysis?</p> <p>3 A Not any specific reference to</p> <p>4 Gestalt perception, no.</p> <p>5 Q Okay. I want to scroll down to</p> <p>6 paragraph 27 of this report. If you could</p> <p>7 just take a moment and read this</p> <p>8 paragraph.</p> <p>9 A Okay. Just paragraph 7?</p> <p>10 Q Twenty-seven, yes.</p> <p>11 A Twenty-seven, I'm sorry. Just</p> <p>12 paragraph 27?</p> <p>13 Q Yes, sir.</p> <p>14 A Okay.</p> <p>15 Q So the last sentence of this</p> <p>16 paragraph says, "As explained below, it is</p> <p>17 my opinion that the ordinary observer,</p> <p>18 familiar with the prior art, would find</p> <p>19 the accused products' overall appearance</p> <p>20 to be substantially different with respect</p> <p>21 to the design claims of the patents-in-</p> <p>22 suite because the overall Gestalt of the</p> <p>23 accused product differs in key areas from</p> <p>24 the body of prior art and the claims of</p> <p>25 the patents-in-suit." Do you see that?</p>

20 (Pages 74 - 77)

<p style="text-align: right;">Page 78</p> <p>1 J. GANDY</p> <p>2 A Yes.</p> <p>3 Q Do you have an understanding as</p> <p>4 to what is being referenced here?</p> <p>5 A Well, other than referencing</p> <p>6 this term "Gestalt," I mean, that's</p> <p>7 effectively what I would, I would, you</p> <p>8 know, do. I mean, I've never applied a</p> <p>9 particular principle to it. But, you</p> <p>10 know, that's basically what I do as far as</p> <p>11 examining the claim design and the alleged</p> <p>12 infringing devices. It's what I would do</p> <p>13 when I was an examiner comparing the claim</p> <p>14 design to the prior art.</p> <p>15 Q Okay. Would you focus on the</p> <p>16 perimeter of a product, or would you focus</p> <p>17 on the design as a whole?</p> <p>18 A I would focus on the design as a</p> <p>19 whole.</p> <p>20 Q Okay. Let's go back to your</p> <p>21 rebuttal report, Exhibit Number 2. And</p> <p>22 let's talk about your comments here on</p> <p>23 Mr. Hatch's report.</p> <p>24 So starting, looking at</p> <p>25 paragraph 22, it says, "In his expert</p>	<p style="text-align: right;">Page 80</p> <p>1 J. GANDY</p> <p>2 MR. BERKOWITZ: Well, I'll challenge</p> <p>3 you on that, Robin. I mean, Mr. Gandy's</p> <p>4 referencing conversations in this report</p> <p>5 as a basis for his opinions. I'd like to</p> <p>6 understand what his basis is for believing</p> <p>7 that Mr. Hatch's opinion is not consistent</p> <p>8 with the Court of Appeals of the Federal</p> <p>9 Circuit.</p> <p>10 MR. CHENG: Again, if you're asking</p> <p>11 for privileged communication, then I</p> <p>12 advise deponent not to answer that. But</p> <p>13 to the extent that the deponent thinks</p> <p>14 that he can't answer the question without</p> <p>15 revealing any privileged communication,</p> <p>16 Mr. Gandy can go ahead and answer the</p> <p>17 question.</p> <p>18 THE WITNESS: So could you repeat the</p> <p>19 question again?</p> <p>20 BY MR. BERKOWITZ:</p> <p>21 Q Sure, sure. So what is the</p> <p>22 basis for your understanding that</p> <p>23 Mr. Hatch's opinion, as far as the</p> <p>24 ordinary observer, is not consistent with</p> <p>25 the standards set forth by the Court of</p>
<p style="text-align: right;">Page 79</p> <p>1 J. GANDY</p> <p>2 report, Mr. Hatch asserts, 'Based on my</p> <p>3 experience as an industrial designer of</p> <p>4 commercial products, it is my opinion that</p> <p>5 an ordinary observer in this case is the</p> <p>6 typical purchaser of hoverboards, i.e., a</p> <p>7 consumer, user, or the parent of a user,</p> <p>8 each having little or no experience</p> <p>9 purchasing hoverboards.'" Do you see</p> <p>10 that?</p> <p>11 A Yes.</p> <p>12 Q Okay. And if we continue</p> <p>13 reading, it says, "However, based on my</p> <p>14 conversations with counsel for multiple</p> <p>15 defendants, this opinion by Mr. Hatch is</p> <p>16 not consistent with the 'hypothetical</p> <p>17 ordinary observer who is conversant in the</p> <p>18 prior art standard' articulated by the</p> <p>19 Court of Appeals for the Federal Circuit."</p> <p>20 Do you see that?</p> <p>21 A Yes. What are you referencing</p> <p>22 here when you say your "conversations with</p> <p>23 counsel"?</p> <p>24 MR. CHENG: Objection. Privileged</p> <p>25 communication.</p>	<p style="text-align: right;">Page 81</p> <p>1 J. GANDY</p> <p>2 Appeals of the Federal Circuit?</p> <p>3 A Well, I think based on, you</p> <p>4 know, just some brief discussions that I</p> <p>5 had with Mr. Cheng to make sure that we're</p> <p>6 both on the same page as far as our</p> <p>7 understanding as to what the ordinary</p> <p>8 observer is -- I mean, having been</p> <p>9 familiar with the Egyptian Goddess case</p> <p>10 and having experience even as an examiner,</p> <p>11 reviewing opinions from the Court of</p> <p>12 Appeals for the Federal Circuit dealing</p> <p>13 with infringement, I'm just familiar with</p> <p>14 what the hypothetical ordinary observer</p> <p>15 standard is supposed to be. And I think</p> <p>16 Mr. Hatch is selling the ordinary observer</p> <p>17 very short as far as what their knowledge</p> <p>18 would be about the prior art.</p> <p>19 Q Okay. So what do you believe</p> <p>20 that the knowledge of the ordinary</p> <p>21 observer would be?</p> <p>22 A I think the ordinary observer</p> <p>23 would be, based on the case law in</p> <p>24 Egyptian Goddess, is someone who is</p> <p>25 familiar with the prior art of the subject</p>

21 (Pages 78 - 81)

<p style="text-align: right;">Page 82</p> <p>1 J. GANDY</p> <p>2 matter that they might be looking to</p> <p>3 purchase.</p> <p>4 Q So you believe the ordinary</p> <p>5 observer is someone that's familiar with</p> <p>6 the prior art?</p> <p>7 A Yes.</p> <p>8 Q Anything more than that?</p> <p>9 MR. CHENG: Objection. Form.</p> <p>10 A No, I think, I think it's</p> <p>11 basically just the ordinary observer is,</p> <p>12 the ordinary observer is a person who</p> <p>13 would be looking to purchase a particular</p> <p>14 product and would have some knowledge of</p> <p>15 what the prior art, what's in the prior</p> <p>16 art for that particular subject matter.</p> <p>17 Q And this paragraph 22, you say,</p> <p>18 "Therefore, in this instance, it remains</p> <p>19 my opinion that an 'ordinary observer' is</p> <p>20 a potential purchaser who is familiar with</p> <p>21 hoverboards and their different designs."</p> <p>22 Do you see that?</p> <p>23 A Yes.</p> <p>24 Q What do you consider a potential</p> <p>25 purchaser?</p>	<p style="text-align: right;">Page 84</p> <p>1 J. GANDY</p> <p>2 A No, that's fine. Okay.</p> <p>3 Q You've read all the way through?</p> <p>4 A Yes. Well, okay, hang on a</p> <p>5 second. Let me just finish.</p> <p>6 Q Please.</p> <p>7 A Okay.</p> <p>8 Q Okay. So you've now read</p> <p>9 through paragraph 23 of your rebuttal</p> <p>10 report. Is that right?</p> <p>11 A Yes.</p> <p>12 Q Okay. And is it fair to say</p> <p>13 that you're critiquing Mr. Hatch's</p> <p>14 opinions?</p> <p>15 A Yes.</p> <p>16 Q Okay. And you're saying that</p> <p>17 Mr. Hatch's report does not adequately</p> <p>18 describe the claim designs and the accused</p> <p>19 products? Is that fair?</p> <p>20 A That's correct.</p> <p>21 Q Okay. And is it fair to say</p> <p>22 that you believe that Mr. Hatch should go</p> <p>23 a step further and describe the designs in</p> <p>24 greater detail?</p> <p>25 A Yeah. I think he should have</p>
<p style="text-align: right;">Page 83</p> <p>1 J. GANDY</p> <p>2 A Well, I think it would be</p> <p>3 someone who would be looking to possibly</p> <p>4 buy a hoverboard. I think it would be the</p> <p>5 same thing -- the potential purchaser</p> <p>6 would be somebody who is interested in</p> <p>7 buying a particular product. Could be an</p> <p>8 automobile, could be a watch, could be a</p> <p>9 piece of furniture. And I think it's</p> <p>10 somebody who would have knowledge of</p> <p>11 what's in the prior art.</p> <p>12 Q So in this sentence that we're</p> <p>13 looking at, you say, "a potential</p> <p>14 purchaser who is familiar with hoverboards</p> <p>15 and their different designs." So by</p> <p>16 "hoverboards and their different designs,"</p> <p>17 are you referring to the prior art?</p> <p>18 A Yes.</p> <p>19 Q Okay. So let's keep scrolling</p> <p>20 down to see paragraph 23. If you don't</p> <p>21 mind, if you could just take a moment to</p> <p>22 read paragraph 23, it might be quicker</p> <p>23 than me reading sentence by sentence. I'm</p> <p>24 happy to scroll whenever you're ready. I</p> <p>25 can also make it bigger, if you'd like.</p>	<p style="text-align: right;">Page 85</p> <p>1 J. GANDY</p> <p>2 gone ahead and described something more</p> <p>3 than just the, just the generic features</p> <p>4 of the hoverboard. Because that's all he</p> <p>5 did. He didn't describe specific</p> <p>6 differences in the appearance of a number</p> <p>7 of the features that comprise the design</p> <p>8 as a whole.</p> <p>9 Q So in essence, are you asking</p> <p>10 him to provide a verbal description of the</p> <p>11 claim design?</p> <p>12 A No, no. I'm asking him just to</p> <p>13 identify features that actually</p> <p>14 distinguish the overall appearance of one</p> <p>15 over the other.</p> <p>16 Q Well, if you're asking for</p> <p>17 specific shapes, isn't that asking for a</p> <p>18 description of the design?</p> <p>19 A When you say "specific shape,"</p> <p>20 I'm just saying that he has -- he has</p> <p>21 referenced the, I believe what I'm</p> <p>22 referring to in there is, he's referenced</p> <p>23 the wheel covers just as being, I think</p> <p>24 something like circular radii. Where the</p> <p>25 wheel covers have different configurations</p>

<p style="text-align: right;">Page 86</p> <p>1 J. GANDY</p> <p>2 between these designs. I think they need</p> <p>3 to be identified. That's what</p> <p>4 distinguishes one over the other.</p> <p>5 Q So you would suggest describing,</p> <p>6 for example, the wheel covers in greater</p> <p>7 detail?</p> <p>8 A No. I'm saying that he should</p> <p>9 look at the wheel covers and indicate what</p> <p>10 the difference is in the shape of them.</p> <p>11 Q And is it your opinion that</p> <p>12 Mr. Hatch should do that for each element</p> <p>13 of the claim design?</p> <p>14 A I think when you're looking at a</p> <p>15 claim design that's shown in full lines,</p> <p>16 you have to look at all of the features</p> <p>17 and details of the claim design.</p> <p>18 Q And for the --</p> <p>19 A That's what makes up the overall</p> <p>20 appearance of it.</p> <p>21 Q And for the elements that are</p> <p>22 shown in dashed lines, do you also need to</p> <p>23 describe those in greater detail?</p> <p>24 A Not if they're not being</p> <p>25 claimed.</p>	<p style="text-align: right;">Page 88</p> <p>1 J. GANDY</p> <p>2 906 patent?</p> <p>3 A Yes.</p> <p>4 Q That's a prior art reference.</p> <p>5 Is that fair?</p> <p>6 A Right, right.</p> <p>7 Q Okay. So what elements are</p> <p>8 indicated in this, in the 906 patent?</p> <p>9 A What -- you mean what elements</p> <p>10 are actually shown in the drawing?</p> <p>11 Q Yes, sir.</p> <p>12 A Okay. I mean, you're showing</p> <p>13 the body of the hoverboard, and you're</p> <p>14 showing in broken lines wheel covers that</p> <p>15 are, that extend over the ends of the</p> <p>16 hoverboard, even though they're not being</p> <p>17 claimed.</p> <p>18 Q So as far as these wheel covers</p> <p>19 -- is it fair if I call them fenders? Are</p> <p>20 those features that are actually indicated</p> <p>21 in the 906 patent?</p> <p>22 A They're not being claimed, but</p> <p>23 they're being disclosed.</p> <p>24 Q Okay. As far as the wheels of</p> <p>25 the 906 patent, are those also being</p>
<p style="text-align: right;">Page 87</p> <p>1 J. GANDY</p> <p>2 Q What if it's in the prior art</p> <p>3 that there are elements in dashed lines?</p> <p>4 How do you treat those as part of the</p> <p>5 analysis?</p> <p>6 A The prior art can be relied on</p> <p>7 for everything that it discloses. It does</p> <p>8 not have to just be limited to what is</p> <p>9 actually claimed as the design.</p> <p>10 Q Let me ask you -- jump ahead</p> <p>11 just for a second and ask you a question</p> <p>12 about that statement. I'm going to go</p> <p>13 ahead and advance to paragraph 31 of your</p> <p>14 rebuttal report. So I'm in paragraph 31</p> <p>15 of your rebuttal report at the top of page</p> <p>16 13. Do you see that?</p> <p>17 A Yeah. I mean, I can't see the</p> <p>18 paragraph.</p> <p>19 Q Yeah. I'm just going to ask you</p> <p>20 a question about the pictures.</p> <p>21 A Okay.</p> <p>22 Q So on the top right, here, do</p> <p>23 you see a picture of a hoverboard?</p> <p>24 A Sure.</p> <p>25 Q You understand that's from the</p>	<p style="text-align: right;">Page 89</p> <p>1 J. GANDY</p> <p>2 disclosed?</p> <p>3 A Yeah, sure they're being</p> <p>4 disclosed. Yeah.</p> <p>5 Q Okay. And we can rely on them</p> <p>6 for what we see here? Is that your</p> <p>7 position?</p> <p>8 A I think the wheels in that</p> <p>9 instance are, you know, obviously are not</p> <p>10 showing any thickness to them. So I mean,</p> <p>11 he's just basically showing what would be</p> <p>12 the shape of a wheel.</p> <p>13 Q And what would that shape be?</p> <p>14 A Circular.</p> <p>15 Q As opposed to the many square</p> <p>16 wheels that we come across. I'm not</p> <p>17 trying to be sarcastic. But is there</p> <p>18 anything else to, any other shapes of the</p> <p>19 wheels that we can glean from the drawings</p> <p>20 of the 906 patent?</p> <p>21 A Of the wheels?</p> <p>22 Q Yes, sir.</p> <p>23 A No.</p> <p>24 Q Okay. And as far as the, what I</p> <p>25 called the fenders, I believe you called</p>

<p style="text-align: right;">Page 90</p> <p>1 J. GANDY</p> <p>2 it something else, sorry --</p> <p>3 A The wheel covers.</p> <p>4 Q The wheel covers. Can you</p> <p>5 describe what shape is shown for the wheel</p> <p>6 covers?</p> <p>7 A Yeah. The wheel covers are</p> <p>8 basically semi-circular.</p> <p>9 Q And beyond the wheel covers</p> <p>10 being semi-circular, is there any other</p> <p>11 information that we can draw as far as</p> <p>12 their features?</p> <p>13 A No.</p> <p>14 Q Okay.</p> <p>15 A No. I guess, one other thing I</p> <p>16 would say is, based on the broken lines,</p> <p>17 they actually extend over the actual</p> <p>18 wheels themselves.</p> <p>19 Q So they have a -- the wheel</p> <p>20 covers would have a larger inside radius,</p> <p>21 inside diameter, than the diameter of the</p> <p>22 wheels? Is that fair?</p> <p>23 A Yeah. They extend over the</p> <p>24 wheels. They actually cover portions of</p> <p>25 the wheels. About half of them.</p>	<p style="text-align: right;">Page 92</p> <p>1 J. GANDY</p> <p>2 commercial market based on my review of</p> <p>3 various websites such as Walmart, Target,</p> <p>4 Best Buy, and Amazon." Did I read that</p> <p>5 correctly?</p> <p>6 A Yes.</p> <p>7 Q Okay. So when you reference</p> <p>8 here a "generic description," do you</p> <p>9 recall what that is?</p> <p>10 A Yeah, sure. It's -- I mean,</p> <p>11 he's describing basically the peripheral</p> <p>12 shape as an hourglass, which is basically</p> <p>13 what all the hoverboards on the commercial</p> <p>14 market are of this style. He's describing</p> <p>15 that you have flat foot plates, which</p> <p>16 again, basically is describing every</p> <p>17 hoverboard on the commercial market. He's</p> <p>18 describing a circular -- I can't remember,</p> <p>19 I have it right here in front of me -- it</p> <p>20 says, "a relatively flat surface across</p> <p>21 the top of the main body, arched covers</p> <p>22 over the wheel area, large radial area on</p> <p>23 the front and back of the underside, and</p> <p>24 elongated light panels on the front</p> <p>25 surface." Those are basically describing,</p>
<p style="text-align: right;">Page 91</p> <p>1 J. GANDY</p> <p>2 Q Let me just go back to where we</p> <p>3 were. I'm just going to skip ahead a bit</p> <p>4 to paragraph 26 of your report and just</p> <p>5 give you a moment, sir, to refresh your</p> <p>6 recollection. It's a long paragraph. If</p> <p>7 you could just take a look through, and</p> <p>8 I'll scroll. I just want to ask you about</p> <p>9 a particular statement further in.</p> <p>10 A If you want to keep scrolling</p> <p>11 down so I can continue.</p> <p>12 Q Sure, sure.</p> <p>13 A Okay, keep scrolling down.</p> <p>14 Okay.</p> <p>15 Q Okay. I'm going to ask you a</p> <p>16 question about -- I'm going to try to</p> <p>17 highlight it, this statement over here.</p> <p>18 Can you see where the highlight is?</p> <p>19 A Yes.</p> <p>20 Q Great. I'll just read that.</p> <p>21 We're in, again, paragraph 26 of the</p> <p>22 rebuttal report, and it says, "The fact of</p> <p>23 the matter is, the generic description</p> <p>24 used by Mr. Hatch in his declaration</p> <p>25 describes most of the hoverboards on the</p>	<p style="text-align: right;">Page 93</p> <p>1 J. GANDY</p> <p>2 other than maybe the last part, the</p> <p>3 elongated light panels, because not every</p> <p>4 hoverboard has light panels. But</p> <p>5 virtually every other thing he's</p> <p>6 describing there is describing virtually</p> <p>7 the same shape of every hoverboard that's</p> <p>8 on the commercial market in this style.</p> <p>9 Q On the market as of what year?</p> <p>10 A I don't have any particular, you</p> <p>11 know, I don't have any particular</p> <p>12 knowledge of what year. I'm just saying</p> <p>13 when I've looked at hoverboards on these</p> <p>14 different websites, they all generally</p> <p>15 have that same, you know, body shape. And</p> <p>16 this goes back to the 906 patent. That</p> <p>17 was the first hoverboard, and basically</p> <p>18 every other hoverboard has copied that</p> <p>19 hourglass shape.</p> <p>20 Q Right. When you say here you're</p> <p>21 referring to "the commercial market based</p> <p>22 on my review of various websites," when</p> <p>23 did you review those websites?</p> <p>24 A Over the course of time since</p> <p>25 last year, since I started working on this</p>

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<p style="text-align: right;">Page 94</p> <p>1 J. GANDY</p> <p>2 case, just for my own knowledge, I looked</p> <p>3 at different websites to see what, how</p> <p>4 many hoverboards are out there and what</p> <p>5 the different styles are.</p> <p>6 Q Do you know what the priority</p> <p>7 dates of the asserted patents are?</p> <p>8 A Of the four design patents?</p> <p>9 Q Yeah. The earliest of the</p> <p>10 asserted patents.</p> <p>11 A Oh. I don't have it right</p> <p>12 offhand.</p> <p>13 Q Do you know if that's 2014?</p> <p>14 A Again, I'd have to look at the</p> <p>15 patent to see. I don't recall right</p> <p>16 offhand whether that's correct. I'll</p> <p>17 assume that what you told me is correct.</p> <p>18 Q Sure. I'll just do it to save</p> <p>19 some time. I'll represent that the</p> <p>20 earliest design patent claims a priority</p> <p>21 in 2014; okay? Do you know what the</p> <p>22 commercial market looked like, going back</p> <p>23 to 2014?</p> <p>24 A I don't know.</p> <p>25 MR. BERKOWITZ: Why don't we just</p>	<p style="text-align: right;">Page 96</p> <p>1 J. GANDY</p> <p>2 about your opinions here. Why don't I</p> <p>3 just give you a moment to read through the</p> <p>4 paragraph.</p> <p>5 A Okay.</p> <p>6 Q Okay. So earlier, I think that</p> <p>7 we agreed that the ordinary observer would</p> <p>8 be someone that's familiar with the prior</p> <p>9 art. Is that fair?</p> <p>10 A Sure.</p> <p>11 Q Okay. And here again, you say,</p> <p>12 "It remains my opinion that an 'ordinary</p> <p>13 observer' is a potential purchaser who is</p> <p>14 familiar with hoverboards and their</p> <p>15 different designs." Do you see that?</p> <p>16 A Yes.</p> <p>17 Q Do you have any opinion as to</p> <p>18 how familiar that ordinary observer would</p> <p>19 be with hoverboards and their different</p> <p>20 designs?</p> <p>21 A I mean, I can't say, you know,</p> <p>22 specifically. I would just say that they</p> <p>23 have, they have a knowledge of prior art</p> <p>24 hoverboards in that they have features</p> <p>25 that distinguish them over each other</p>
<p style="text-align: right;">Page 95</p> <p>1 J. GANDY</p> <p>2 take a five-minute break?</p> <p>3 MR. CHENG: Okay. That works for me.</p> <p>4 THE REPORTER: We are off the record</p> <p>5 at 11:57 a.m.</p> <p>6 (Off the record.)</p> <p>7 THE REPORTER: We are back on the</p> <p>8 record at 12:04 p.m.</p> <p>9 BY MR. BERKOWITZ:</p> <p>10 Q Okay. So back after a short</p> <p>11 break. I'm just going to share my screen</p> <p>12 again. Mr. Gandy, can you see that I've</p> <p>13 shared my screen?</p> <p>14 A Yes, yes.</p> <p>15 Q Okay. So we're looking -- I</p> <p>16 have now flipped to paragraph 28 of your</p> <p>17 rebuttal report. Do you see that?</p> <p>18 A Yes.</p> <p>19 Q And it's under Section VI,</p> <p>20 entitled "The Ordinary Observer." Do you</p> <p>21 see that?</p> <p>22 A Yes.</p> <p>23 Q Okay. So we spoke a bit before</p> <p>24 about the ordinary observer. I just</p> <p>25 wanted to ask you a few more questions</p>	<p style="text-align: right;">Page 97</p> <p>1 J. GANDY</p> <p>2 beyond just the hourglass peripheral shape</p> <p>3 of them.</p> <p>4 Q So you have an opinion as to</p> <p>5 whether potential purchasers take into</p> <p>6 account consumer reviews in making a</p> <p>7 decision as to which hoverboard to</p> <p>8 purchase?</p> <p>9 MR. CHENG: Objection. Misstatement</p> <p>10 of deponent's testimony.</p> <p>11 MR. BERKOWITZ: I don't believe I've</p> <p>12 asked him that question before. I'm</p> <p>13 asking him whether he has an opinion or</p> <p>14 not. But you can state your objection.</p> <p>15 THE WITNESS: An opinion on whether a</p> <p>16 purchaser would be looking at reviews?</p> <p>17 MR. BERKOWITZ: Yes.</p> <p>18 THE WITNESS: Product reviews?</p> <p>19 MR. BERKOWITZ: Correct.</p> <p>20 THE WITNESS: Sure. I think that's</p> <p>21 reasonable.</p> <p>22 BY MR. BERKOWITZ:</p> <p>23 Q Okay. What about brands? Do</p> <p>24 you think a consumer of hoverboards would</p> <p>25 be looking at what brand is offering the</p>

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<p style="text-align: right;">Page 98</p> <p>1 J. GANDY</p> <p>2 hoverboard?</p> <p>3 A I would assume they're probably</p> <p>4 familiar with what brands might be out</p> <p>5 there.</p> <p>6 Q Do you have an opinion as to</p> <p>7 whether the branding would impact the</p> <p>8 consumer's choice as to which hoverboard</p> <p>9 to select?</p> <p>10 MR. CHENG: Objection. Calls for</p> <p>11 speculation.</p> <p>12 THE WITNESS: Could you repeat the</p> <p>13 question again?</p> <p>14 MR. BERKOWITZ: Could the court</p> <p>15 reporter read it back?</p> <p>16 THE REPORTER: Sure. One moment.</p> <p>17 (The reporter read the record as</p> <p>18 requested.)</p> <p>19 THE REPORTER: That was the</p> <p>20 question.</p> <p>21 THE WITNESS: It's possible.</p> <p>22 BY MR. BERKOWITZ:</p> <p>23 Q Okay. All right. Looking</p> <p>24 through this paragraph 28, here you say --</p> <p>25 THE REPORTER: I'm sorry, if you</p>	<p style="text-align: right;">Page 100</p> <p>1 J. GANDY</p> <p>2 A Yes.</p> <p>3 Q And just to clarify. Actually,</p> <p>4 let me clarify, it says "the specific</p> <p>5 shape and appearance of the foot pads on</p> <p>6 the top surface of the hoverboard." Okay?</p> <p>7 A Yes.</p> <p>8 Q And by "top surface," what are</p> <p>9 you referring to?</p> <p>10 A I'm referring to basically the</p> <p>11 two opposing foot pads or the foot</p> <p>12 surfaces where a person would stand on the</p> <p>13 hoverboard.</p> <p>14 Q Okay. And you also mention that</p> <p>15 a potential purchaser would look at</p> <p>16 "whether the front and rear surfaces have</p> <p>17 LED lights or not." Do you see that?</p> <p>18 A Yes.</p> <p>19 Q And just to clarify, when you</p> <p>20 say "front and rear surfaces," you're</p> <p>21 referring to the surfaces that are</p> <p>22 perpendicular to the top surface?</p> <p>23 A Yes.</p> <p>24 Q Okay. And with respect to those</p> <p>25 LED lights, you say that a consumer,</p>
<p style="text-align: right;">Page 99</p> <p>1 J. GANDY</p> <p>2 could just share your screen again.</p> <p>3 MR. BERKOWITZ: Oh, I'm sorry.</p> <p>4 BY MR. BERKOWITZ:</p> <p>5 Q Okay. So I've highlighted a</p> <p>6 sentence on paragraph 28. Can you see</p> <p>7 that?</p> <p>8 A Yes, yes.</p> <p>9 Q Okay. And I'm summarizing, it's</p> <p>10 your opinion that potential purchasers</p> <p>11 would understand that a hoverboard has an</p> <p>12 hourglass shape. Is that fair?</p> <p>13 A Yes.</p> <p>14 Q And from there, a consumer would</p> <p>15 look to other features in order to</p> <p>16 determine whether or not they are</p> <p>17 interested in that item. Is that fair?</p> <p>18 A That's correct.</p> <p>19 Q Okay. And here you identify</p> <p>20 some of those features. Is that fair?</p> <p>21 A Yes.</p> <p>22 Q Okay. And that includes "the</p> <p>23 specific shape and appearance of the foot</p> <p>24 pads on top of the surface." Is that</p> <p>25 right?</p>	<p style="text-align: right;">Page 101</p> <p>1 J. GANDY</p> <p>2 potential purchaser would also consider</p> <p>3 "the shape and appearance of the lights."</p> <p>4 Is that fair?</p> <p>5 A Yes, yes.</p> <p>6 Q Okay. And then you say, "as</p> <p>7 well as other potential features that</p> <p>8 stand out to them." Do you see that?</p> <p>9 A Yes.</p> <p>10 Q Can you think of any of these</p> <p>11 other potential features that a hoverboard</p> <p>12 purchaser would consider?</p> <p>13 A Could be, could be, you know,</p> <p>14 whether there were some distinguishing</p> <p>15 features to the wheel covers, any</p> <p>16 particular shape that they would feel</p> <p>17 would distinguish them or really stand out</p> <p>18 to them. Could be that in the narrow</p> <p>19 portion on the top surface in the center</p> <p>20 of the hoverboard as to what the contour</p> <p>21 of that is, what particular appearance it</p> <p>22 might have. Some of them have lights in</p> <p>23 the center area.</p> <p>24 Q What about the wheels? Is that</p> <p>25 a feature that a potential purchaser of a</p>

<p style="text-align: right;">Page 102</p> <p>1 J. GANDY</p> <p>2 hoverboard would consider?</p> <p>3 A Sure. I think they could</p> <p>4 potentially look at the wheels. I mean,</p> <p>5 in this instance, they're not being</p> <p>6 claimed in the four design patents, so I</p> <p>7 didn't even reference anything about the</p> <p>8 wheels.</p> <p>9 Q All right. Let's move on to</p> <p>10 paragraph 29. So if you could just take a</p> <p>11 moment and just skim through that. I just</p> <p>12 have a few questions about it.</p> <p>13 A Can you scroll down there a</p> <p>14 little bit?</p> <p>15 Q Sure.</p> <p>16 A Okay.</p> <p>17 Q All right. So a few lines down,</p> <p>18 you say, "Although I have not been</p> <p>19 provided actual samples of the accused</p> <p>20 products, I consider the photographs that</p> <p>21 were supplied to me by counsel for</p> <p>22 multiple defendants to be of sufficient</p> <p>23 quality to understand all of the features</p> <p>24 and details and the overall shape and</p> <p>25 appearance of the accused products so as</p>	<p style="text-align: right;">Page 104</p> <p>1 J. GANDY</p> <p>2 front and rear surfaces of the accused</p> <p>3 products are the same." Do you see that?</p> <p>4 A Yes.</p> <p>5 Q So did you not receive</p> <p>6 photographs of the front and rear of each</p> <p>7 of the accused products?</p> <p>8 A I believe that was the case. We</p> <p>9 had, you know, a single view. It could</p> <p>10 have been the front or the rear. But I</p> <p>11 seem to recall that I didn't get two views</p> <p>12 that would be definitively the front and</p> <p>13 the rear, so I made an inquiry with</p> <p>14 Mr. Cheng about that.</p> <p>15 Q And do you know if that</p> <p>16 representation of the front and the rear</p> <p>17 surfaces of the accused products being the</p> <p>18 same, do you know if that is still true?</p> <p>19 A I have to assume that Mr. Cheng</p> <p>20 told me that that's what they were, and I</p> <p>21 have to assume that that's what they are.</p> <p>22 Q If it turns out the front and</p> <p>23 rear surfaces are different, does that</p> <p>24 impact your analysis here?</p> <p>25 A Probably not. That's kind of</p>
<p style="text-align: right;">Page 103</p> <p>1 J. GANDY</p> <p>2 to render an opinion of noninfringement of</p> <p>3 the asserted design patents." Did I read</p> <p>4 that correctly?</p> <p>5 A Yes, sure.</p> <p>6 Q And we discussed earlier that</p> <p>7 you did not receive actual samples; you</p> <p>8 based your analysis on photographs. Is</p> <p>9 that fair?</p> <p>10 A That's correct.</p> <p>11 Q Other than the photographs that</p> <p>12 are shown in this report, in the rebuttal</p> <p>13 report, were there any other photographs</p> <p>14 that you were provided with respect to the</p> <p>15 accused products?</p> <p>16 A Yeah. I think I was provided,</p> <p>17 you know, more than the photographs that I</p> <p>18 put in the report. What I did is, I just</p> <p>19 chose the ones that I felt were the</p> <p>20 clearest and the most accurate in showing</p> <p>21 the shape and appearance and details of</p> <p>22 the accused products.</p> <p>23 Q Okay. And the next sentence</p> <p>24 says, "Also, when I inquired, counsel for</p> <p>25 multiple defendants informed me that the</p>	<p style="text-align: right;">Page 105</p> <p>1 J. GANDY</p> <p>2 speculation without actually seeing</p> <p>3 whether they are different, whether it</p> <p>4 would or not. But I would in all</p> <p>5 likelihood say no, it probably wouldn't.</p> <p>6 Q But you would have to see the</p> <p>7 front and rear views to confirm that?</p> <p>8 MR. CHENG: Objection. Asked and</p> <p>9 answered. Go ahead, sorry.</p> <p>10 THE WITNESS: If, in fact, they</p> <p>11 weren't the same. Yeah, I would want to</p> <p>12 see what the difference was between the</p> <p>13 two.</p> <p>14 BY MR. BERKOWITZ:</p> <p>15 Q And I guess this question I</p> <p>16 probably should have asked when I first</p> <p>17 brought up this rebuttal report. Is there</p> <p>18 anything in your report that you believe</p> <p>19 is incorrect or you would like to change?</p> <p>20 A No. No.</p> <p>21 Q And as far as what we marked as</p> <p>22 Exhibit 1, your opening report, was there</p> <p>23 anything in there that, in going back, you</p> <p>24 believe is incorrect or that you would</p> <p>25 want to fix?</p>

27 (Pages 102 - 105)

<p style="text-align: right;">Page 106</p> <p>1 J. GANDY</p> <p>2 A Not that I'm aware of, no.</p> <p>3 Q Okay, thank you. Let's jump</p> <p>4 ahead to page 41 of your report. Okay.</p> <p>5 So this is Section H. So we're in Section</p> <p>6 VII, Subsection H of your report. Do you</p> <p>7 see that?</p> <p>8 A Yes.</p> <p>9 Q And this is a comparison of the</p> <p>10 723 patent, one of the asserted patents,</p> <p>11 against the Gyroor C product. Do you see</p> <p>12 that?</p> <p>13 A Yes.</p> <p>14 Q Okay. So let's walk through</p> <p>15 your analysis together. Maybe you can</p> <p>16 explain how you went about coming to your</p> <p>17 conclusions.</p> <p>18 So at the top here where my</p> <p>19 cursor is, you can see that there are</p> <p>20 three photographs. Is that right?</p> <p>21 A Yes.</p> <p>22 Q And is it fair to say that</p> <p>23 you're performing what's known as a three-</p> <p>24 way analysis here?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 108</p> <p>1 J. GANDY</p> <p>2 A Yes, I did, with the exception</p> <p>3 of the fact that the four design patents</p> <p>4 and the alleged infringing designs include</p> <p>5 foot pads that have a surface pattern on</p> <p>6 them, where in the 906 does not have that.</p> <p>7 Q Okay. Well, earlier we were</p> <p>8 talking about the top surface of the</p> <p>9 hoverboard. Can you sort of point that</p> <p>10 out here with reference to these three</p> <p>11 pictures that we see above paragraph 69?</p> <p>12 A You want me to point out the top</p> <p>13 surface?</p> <p>14 Q Yes, what would you consider the</p> <p>15 top surface?</p> <p>16 A Well, I consider the top surface</p> <p>17 this area between what I'm showing on</p> <p>18 my -- can you see my cursor, where I'm</p> <p>19 going?</p> <p>20 Q I can't. Maybe you could tell</p> <p>21 me where to move the cursor with reference</p> <p>22 to each of the photographs?</p> <p>23 A Okay, well if you want to take</p> <p>24 your cursor over just inside the wheel</p> <p>25 cover of the 723 on the left side, bring</p>
<p style="text-align: right;">Page 107</p> <p>1 J. GANDY</p> <p>2 Q Okay. And the three-way</p> <p>3 analysis involves comparisons between what</p> <p>4 specifically?</p> <p>5 A Well, it involves comparisons</p> <p>6 between the claimed design, the alleged</p> <p>7 infringing design, and the closest prior</p> <p>8 art.</p> <p>9 Q Okay. And as we talked about</p> <p>10 earlier, your opinion is that the closest</p> <p>11 prior art is the 906 patent; is that</p> <p>12 right?</p> <p>13 A That's correct, yes.</p> <p>14 Q And it's your opinion that the</p> <p>15 906 patent is the closest prior art for</p> <p>16 each of the four asserted patents; right?</p> <p>17 A Yes.</p> <p>18 Q Was there any other prior art</p> <p>19 that you considered as potentially being</p> <p>20 close to these products?</p> <p>21 A The only thing I referenced was</p> <p>22 the corresponding utility patent to the</p> <p>23 906 design patent.</p> <p>24 Q And you performed this analysis</p> <p>25 for each view of the asserted patents?</p>	<p style="text-align: right;">Page 109</p> <p>1 J. GANDY</p> <p>2 it in just slightly. Okay, I would</p> <p>3 consider that the top surface extending</p> <p>4 all the way across to the other wheel</p> <p>5 cover. And the same thing with the Gyroor</p> <p>6 C and the same thing with the 906.</p> <p>7 Q So all the area inboard of the</p> <p>8 wheel covers. Is that fair?</p> <p>9 A Yes, yes.</p> <p>10 Q Okay. And I believe you</p> <p>11 referred to this portion on the top</p> <p>12 surface as the foot pad? Is that fair?</p> <p>13 A Yes. Yes.</p> <p>14 Q So that would be -- in practice,</p> <p>15 that would be the rubber foot pad. Is</p> <p>16 that fair?</p> <p>17 A That's correct, yes.</p> <p>18 Q Okay. And we see that on the</p> <p>19 723 pad and on the Gyroor C. Is that</p> <p>20 fair?</p> <p>21 A That's correct.</p> <p>22 Q We do not see a foot pad on the</p> <p>23 906 patent.</p> <p>24 A That's correct. That's correct.</p> <p>25 Q And I think we're all in</p>

28 (Pages 106 - 109)

<p style="text-align: right;">Page 110</p> <p>1 J. GANDY</p> <p>2 agreement that the three of these products</p> <p>3 shown here have an hourglass shape. Is</p> <p>4 that fair?</p> <p>5 A Yes</p> <p>6 Q Okay. And as far as the wheel</p> <p>7 covers on the 906 patent, earlier you said</p> <p>8 that they enclose the wheel. Is that</p> <p>9 fair?</p> <p>10 A That's correct, yeah.</p> <p>11 Q Okay. When you're performing</p> <p>12 this analysis, are there any other</p> <p>13 prominent features of the 723 that you're</p> <p>14 considering?</p> <p>15 A You mean on the top surface?</p> <p>16 Q Right. Right now, we're looking</p> <p>17 at the top surface.</p> <p>18 A Right. Well, again, I would say</p> <p>19 the foot pads and, well, even though you</p> <p>20 can't really see it on the top surface,</p> <p>21 the top surface of the 723, the center</p> <p>22 portion, is convexly curved, whereas in</p> <p>23 the Gyroor C, it's actually recessed down.</p> <p>24 Q Is any one surface more</p> <p>25 important in your analysis than others?</p>	<p style="text-align: right;">Page 112</p> <p>1 J. GANDY</p> <p>2 I guess, this mirror or equivalent</p> <p>3 portions that are sort of cut away from</p> <p>4 the top surface. Is that fair?</p> <p>5 A Right, right.</p> <p>6 Q Okay.</p> <p>7 MR. CHENG: Objection. That was</p> <p>8 taken out of context of the report.</p> <p>9 BY MR. BERKOWITZ:</p> <p>10 Q Okay. Mr. Gandy, just to</p> <p>11 clarify, you're referring to a "concavely</p> <p>12 curved, recessed center portion." I just</p> <p>13 want to make sure for the record that we</p> <p>14 are all on the same page as to what that</p> <p>15 means. Can you point that out for us?</p> <p>16 A Yeah. If you move your cursor</p> <p>17 just slightly up there where I think you</p> <p>18 were showing, that's what I consider to be</p> <p>19 the concavely curved, recessed center</p> <p>20 portion.</p> <p>21 Q Right. And since we have to</p> <p>22 reduce this description to words for the</p> <p>23 purposes of this transcript, how can we</p> <p>24 identify this center portion?</p> <p>25 A How, I'm sorry. How what?</p>
<p style="text-align: right;">Page 111</p> <p>1 J. GANDY</p> <p>2 A Well, I mean, I would certainly</p> <p>3 -- I think the foot pads probably have</p> <p>4 more impact on the overall visual</p> <p>5 appearance on these hoverboards than some</p> <p>6 of the other features. Particularly when</p> <p>7 you consider a person is going to buy</p> <p>8 them, that's where they're going to stand.</p> <p>9 So I think they're really going to be able</p> <p>10 to distinguish one foot pad over another.</p> <p>11 If there is a really different pattern on</p> <p>12 them, that's going to jump out at them.</p> <p>13 Q And would the ordinary observer</p> <p>14 notice or be able to distinguish a product</p> <p>15 that does not have foot pads at all?</p> <p>16 A Oh, yeah. I certainly think</p> <p>17 they would be able to distinguish it,</p> <p>18 yeah.</p> <p>19 Q Okay. Here in paragraph 69, you</p> <p>20 refer to a "concavely curved recessed</p> <p>21 center portion."</p> <p>22 A Uh-huh.</p> <p>23 Q I just want to confirm that</p> <p>24 we're all on the same page as to what</p> <p>25 that's referring to. You're referring to,</p>	<p style="text-align: right;">Page 113</p> <p>1 J. GANDY</p> <p>2 Q How can we describe this center</p> <p>3 portion for the purposes of getting it</p> <p>4 down on the transcript?</p> <p>5 A I think basically what I said.</p> <p>6 It's a concavely curved, recessed center</p> <p>7 portion.</p> <p>8 Q And is it just the top surface</p> <p>9 that has this concavely curved center</p> <p>10 portion?</p> <p>11 A Well, when you're looking at it</p> <p>12 from the top view, that's what it is.</p> <p>13 Obviously, when you look at it from the</p> <p>14 front or the rear, it's not necessarily</p> <p>15 going to look concavely curved. It's</p> <p>16 going to be recessed in.</p> <p>17 Q Okay. Is it fair to refer to</p> <p>18 this as sort of the "neck" of the</p> <p>19 hourglass?</p> <p>20 A Yeah, yeah. That's fair.</p> <p>21 Q Okay. Let's do that. Okay.</p> <p>22 A Uh-huh. Sure.</p> <p>23 Q All right. Let's look at some</p> <p>24 other views. I've moved over to page 42</p> <p>25 of your report. And at the top of the</p>

29 (Pages 110 - 113)

<p style="text-align: right;">Page 114</p> <p>1 J. GANDY</p> <p>2 page, you can see that there's four</p> <p>3 images. Is that fair?</p> <p>4 A Sure.</p> <p>5 Q Can you tell us in your own</p> <p>6 words what's being shown here?</p> <p>7 A Well, it's the front and rear</p> <p>8 surfaces.</p> <p>9 Q Okay. And you're showing the</p> <p>10 front and rear surfaces from the 723</p> <p>11 patent as well as a common front and rear</p> <p>12 surface of the 906 and a front and rear,</p> <p>13 what you call a front and rear view of the</p> <p>14 C product. Is that fair?</p> <p>15 A That's correct.</p> <p>16 Q Okay. As far as the photograph</p> <p>17 here of the C product, would you call that</p> <p>18 a front view? If that is, indeed, the</p> <p>19 front?</p> <p>20 A I would call it a front view.</p> <p>21 If you want to be more specific, what</p> <p>22 you're showing in the 723, the front and</p> <p>23 rear, that would be considered an</p> <p>24 elevation. Whereas the photograph of the</p> <p>25 Gyro C is not an elevation. But to be</p>	<p style="text-align: right;">Page 116</p> <p>1 J. GANDY</p> <p>2 A Mainly because of what happens</p> <p>3 in the center area of the hoverboard. In</p> <p>4 the 723, the center of the hoverboard has</p> <p>5 a slight convex curvature. So does the</p> <p>6 906. Whereas the Gyroor "C," the center</p> <p>7 portion is recessed.</p> <p>8 Q Are we able to tell from this</p> <p>9 photograph of the Gyroor C that the center</p> <p>10 portion is recessed?</p> <p>11 A I think so.</p> <p>12 Q Even though it's perspective</p> <p>13 view? It's your opinion that you can't</p> <p>14 tell that it's recessed?</p> <p>15 A Sure, sure. I mean, you can</p> <p>16 clearly see just inside of the foot pads,</p> <p>17 that's a sloping surface that goes down.</p> <p>18 You have those two, kind of arcuately</p> <p>19 curved dark areas that I assume are</p> <p>20 probably lights. And you can clearly see</p> <p>21 that's recessed.</p> <p>22 Q Okay. Now the Gyroor C product</p> <p>23 has lights on the -- let's assume that</p> <p>24 this is a front view of the Gyroor C. Let</p> <p>25 me start over. Strike that. Let's assume</p>
<p style="text-align: right;">Page 115</p> <p>1 J. GANDY</p> <p>2 fair, to understand, nothing we see in</p> <p>3 life is an elevation. It's in</p> <p>4 perspective.</p> <p>5 Q Right. So I think you answered</p> <p>6 my next question. What's shown as a</p> <p>7 photograph of the Gyroor C is more a</p> <p>8 perspective view. Is that fair?</p> <p>9 A Yeah. I would say it's a front</p> <p>10 perspective view.</p> <p>11 Q Okay. And the front view and</p> <p>12 the rear view of the 723 patent have</p> <p>13 slight differences. Is that fair?</p> <p>14 A Yes.</p> <p>15 Q Okay. And is it still your</p> <p>16 opinion that the 906 patent is -- I'm</p> <p>17 sorry. That the Gyroor C product, from</p> <p>18 this view, is closer to the 906 patent</p> <p>19 than the 723 patent?</p> <p>20 A No. I think you've got it the</p> <p>21 wrong way around. What I'm saying is that</p> <p>22 the 906 patent is closer in appearance to</p> <p>23 the 723 than it is to the Gyroor C.</p> <p>24 Q Why?</p> <p>25 MR. CHENG: Objection. Form.</p>	<p style="text-align: right;">Page 117</p> <p>1 J. GANDY</p> <p>2 that this is a front view of the Gyroor C.</p> <p>3 There are light bars on each end of the</p> <p>4 product?</p> <p>5 A Yeah. The front and rear</p> <p>6 surface?</p> <p>7 Q Yes.</p> <p>8 A Yeah, yeah.</p> <p>9 Q Okay. And if we assume that</p> <p>10 this is a front view, do we know if there</p> <p>11 are lights on the rear view, on the rear</p> <p>12 side of it?</p> <p>13 A Based on what Mr. Cheng has</p> <p>14 indicated to me, the front and rears are</p> <p>15 the same. So I certainly have to assume</p> <p>16 that that's what there are.</p> <p>17 Q Okay. And the 906 patent does</p> <p>18 not show any light bars; is that fair?</p> <p>19 A That's correct.</p> <p>20 Q Okay. Next, we're going to</p> <p>21 paragraph 70, where you're showing some</p> <p>22 different views of these references,</p> <p>23 including the wheels and, I would say, two</p> <p>24 perspective views. I mean, one</p> <p>25 perspective view of each of the three</p>

<p style="text-align: right;">Page 118</p> <p>1 J. GANDY</p> <p>2 references. Is that fair?</p> <p>3 A Sure.</p> <p>4 Q Okay. So it's your opinion that</p> <p>5 the wheel covers of the Gyroor C are</p> <p>6 unlike those of the 723 patent. Is that</p> <p>7 fair?</p> <p>8 A Yes, yes.</p> <p>9 Q And why is that?</p> <p>10 A Well, they don't extend over the</p> <p>11 wheel. In the 723, you can clearly see</p> <p>12 that the cover extends over a portion of</p> <p>13 the wheel.</p> <p>14 Q Right. But the wheel covers of</p> <p>15 the Gyroor C do not cover a significant</p> <p>16 portion of the wheel. Is that right?</p> <p>17 A That's correct. That's correct.</p> <p>18 And the wheel covers of the 723 certainly</p> <p>19 appear to be more of a semi-circular</p> <p>20 shape, whereas it appears the ends of the</p> <p>21 Gyroor C wheel cover are kind of flattened</p> <p>22 out. They're not as fairly a continuous</p> <p>23 radius.</p> <p>24 Q And as far as the wheel covers</p> <p>25 of the 906 patent, beyond being able to</p>	<p style="text-align: right;">Page 120</p> <p>1 J. GANDY</p> <p>2 Q And as far -- strike that. The</p> <p>3 bottom surface shows, is it fair to say</p> <p>4 that the bottom surface of the 723 patent</p> <p>5 has two cover plates that are held on by</p> <p>6 some sort of fasteners?</p> <p>7 A That's what it looks like, yeah.</p> <p>8 Q Okay. The bottom surface of the</p> <p>9 906 patent does not show any fasteners.</p> <p>10 Is that fair?</p> <p>11 A That's correct.</p> <p>12 Q And looking to the bottom view</p> <p>13 of the Gyroor "C," does that show two</p> <p>14 covers that are held on by fasteners?</p> <p>15 A That's what it looks like, yeah.</p> <p>16 Q Okay. And you do call out that</p> <p>17 the Gyroor C has vent holes. Is that</p> <p>18 fair?</p> <p>19 A Yes.</p> <p>20 Q And it's your opinion that an</p> <p>21 ordinary observer would pay attention to</p> <p>22 those vent holes?</p> <p>23 A Well, as I indicated in the</p> <p>24 statement above, all four of the design</p> <p>25 patents claim the bottom surface. So for</p>
<p style="text-align: right;">Page 119</p> <p>1 J. GANDY</p> <p>2 say that they cover a significant portion</p> <p>3 of the wheel and that they're round, is</p> <p>4 there any other features that we can</p> <p>5 identify?</p> <p>6 A No.</p> <p>7 Q Okay. Let's jump over to</p> <p>8 paragraph 73 and discuss the bottom of the</p> <p>9 products. So you can just take a moment</p> <p>10 and read through paragraph 73. I'm on</p> <p>11 page 44 of Exhibit Number 2.</p> <p>12 A Okay.</p> <p>13 Q All right. So in this paragraph</p> <p>14 73, is it fair to say that you're</p> <p>15 performing a three-way comparison between</p> <p>16 the bottom of the 723 patent, the 906</p> <p>17 patent, and the Gyroor C?</p> <p>18 A Yes.</p> <p>19 Q Okay. And what are some of the</p> <p>20 prominent features of the bottom of the</p> <p>21 723 patent?</p> <p>22 A Basically, the bottom is pretty</p> <p>23 much plain. It's pretty much a plain,</p> <p>24 flat surface. There's not really any</p> <p>25 features on the bottom surface.</p>	<p style="text-align: right;">Page 121</p> <p>1 J. GANDY</p> <p>2 the purpose of having to do an analysis of</p> <p>3 the, comparison of the claim designs and</p> <p>4 the alleged infringing devices, you've got</p> <p>5 to look at the bottom surfaces.</p> <p>6 Q And I believe earlier you</p> <p>7 testified that an ordinary observer would</p> <p>8 be most focused on the foot pads because</p> <p>9 that's what they're looking down on when</p> <p>10 they're standing on the product. Is that</p> <p>11 fair?</p> <p>12 A Yeah, I think that's fair.</p> <p>13 Q Okay. Do you have an</p> <p>14 understanding as to the purpose of the</p> <p>15 vent holes in the Gyroor C?</p> <p>16 A Well, I certainly would think</p> <p>17 they would be for some type of</p> <p>18 ventilation.</p> <p>19 MR. BERKOWITZ: Why don't we just --</p> <p>20 if you don't mind, let's just take a very</p> <p>21 quick break. I think I'm done with the</p> <p>22 questioning. I just want to take one last</p> <p>23 look through my notes. Okay?</p> <p>24 THE WITNESS: Okay.</p> <p>25 MR. BERKOWITZ: Let's just take five</p>

<p style="text-align: right;">Page 122</p> <p>1 J. GANDY</p> <p>2 minutes.</p> <p>3 MR. CHENG: If anyone wants to have a</p> <p>4 lunch break? Or, Mark, do you think</p> <p>5 you'll get everything wrapped up before?</p> <p>6 MR. BERKOWITZ: I think I'm done. I</p> <p>7 just want to go through my notes one last</p> <p>8 time.</p> <p>9 MR. CHENG: Yeah, sure. Okay.</p> <p>10 THE REPORTER: We are off the record</p> <p>11 at 12:37 p.m.</p> <p>12 (Off the record.)</p> <p>13 THE REPORTER: We are back on the</p> <p>14 record at 12:45 p.m.</p> <p>15 BY MR. BERKOWITZ:</p> <p>16 Q Okay. So, Mr. Gandy, I'm going</p> <p>17 to share my screen again. Can you see</p> <p>18 that I've shared my screen?</p> <p>19 A Yes, yes.</p> <p>20 Q Okay. So I'm currently in</p> <p>21 paragraph 100 of your rebuttal report that</p> <p>22 we've marked as Exhibit Number 2. It</p> <p>23 spans pages 64 through 65. Do you see</p> <p>24 that?</p> <p>25 A Sure, yes.</p>	<p style="text-align: right;">Page 124</p> <p>1 J. GANDY</p> <p>2 believe it's on both the front and rear</p> <p>3 surface, that was basically it. Actually,</p> <p>4 I guess I'm looking at this, it does say</p> <p>5 the upper portion just includes the word</p> <p>6 "Gyroor."</p> <p>7 Q Does that word, in your opinion,</p> <p>8 distinguish the Gyroor D from, in this</p> <p>9 case, the asserted 195 patent?</p> <p>10 A I don't think it's the main</p> <p>11 reason why it would distinguish it.</p> <p>12 Again, I just point it out as just another</p> <p>13 feature that's on there.</p> <p>14 I'm aware of the fact that this</p> <p>15 is an issue before the Court of Appeals</p> <p>16 for the Federal Circuit right now. So I</p> <p>17 think that, whether it can be considered</p> <p>18 for the purposes of showing</p> <p>19 noninfringement I think is an issue that's</p> <p>20 actually in front of the Federal Circuit</p> <p>21 right now.</p> <p>22 Q Okay. So I guess --</p> <p>23 A That's the main reason why I</p> <p>24 pointed it out, because I'm aware of that.</p> <p>25 Q And do you believe it tends to</p>
<p style="text-align: right;">Page 123</p> <p>1 J. GANDY</p> <p>2 Q Do you see there's a photograph</p> <p>3 in approximately the middle of the page?</p> <p>4 A Yes.</p> <p>5 Q And it's entitled "Enlarged</p> <p>6 Partial View Gyroor D. Do you see that?</p> <p>7 A Yes.</p> <p>8 Q And this is either, you know, a</p> <p>9 front or rear view of the Gyroor D</p> <p>10 product. Is that fair?</p> <p>11 A Yes, yes.</p> <p>12 Q Okay. And on the right side of</p> <p>13 the photograph, there is a brand name. It</p> <p>14 says "Gyroor." Do you see that?</p> <p>15 A Yeah.</p> <p>16 Q Did you take that name into</p> <p>17 account in your analysis?</p> <p>18 A I did. I did. You know, as a,</p> <p>19 you know, it was part of the design of the</p> <p>20 Gyroor product. So I did, you know, at</p> <p>21 least point it out.</p> <p>22 Q Did you provide any weight to it</p> <p>23 in your analysis?</p> <p>24 A Other than just to mention that</p> <p>25 it is on, you know, the front surface, I</p>	<p style="text-align: right;">Page 125</p> <p>1 J. GANDY</p> <p>2 support a noninfringement position?</p> <p>3 A I don't think it would be the</p> <p>4 sole basis for it.</p> <p>5 Q But it is something that you</p> <p>6 relied upon here?</p> <p>7 A Yeah. I wouldn't have pointed</p> <p>8 it out if I didn't rely on it. Yeah.</p> <p>9 MR. BERKOWITZ: Okay. Yeah. I don't</p> <p>10 have any further questions for the</p> <p>11 witness.</p> <p>12 MR. CHENG: I just have one question,</p> <p>13 so we can get it wrapped up very quickly.</p> <p>14 EXAMINATION</p> <p>15 BY MR. CHENG:</p> <p>16 Q Mr. Gandy, I know that you</p> <p>17 stated that you don't know Mr. Rake, and</p> <p>18 you did not read his report. Do you have</p> <p>19 any objections to Mr. Rake's using of the</p> <p>20 Gestalt theory to support his view of the</p> <p>21 noninfringement in this case?</p> <p>22 MR. BERKOWITZ: Objection.</p> <p>23 A Should I answer?</p> <p>24 Q Sure, yes.</p> <p>25 A No. I don't have any objection</p>


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1 J. GANDY
 2 to it. It's just something I'm not aware
 3 of.
 4 MR. CHENG: I'm done with my
 5 questions. Thank you.
 6 MR. BERKOWITZ: Mr. Gandy, it was a
 7 pleasure. Thank you so much for your
 8 time.
 9 THE WITNESS: Thank you.
 10 MR. CHENG: Thank you, Mr. Gandy, for
 11 attending the deposition, and thank you,
 12 Ms. Reporter for helping us with this.
 13 THE REPORTER: Thank you. We are off
 14 the record at 12:48 p.m.
 15
 16 (Whereupon, at 12:48 p.m., the
 17 proceeding was concluded.)
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1
 2
 3 A C K N O W L E D G E M E N T
 4
 5 I, JIM GANDY, certify
 6 that I have read the transcript of my
 7 testimony taken under oath on October 26,
 8 2022, and that the transcript is a
 9 true, complete and correct record of
 10 what was asked, answered and said
 11 during this deposition, and that the
 12 answers on the record as given by me
 13 are true and correct.
 14
 15 _____
 16 JIM GANDY
 17
 18 Signed and subscribed to
 19 before me, this day
 20 of , 20 .
 21 _____
 22 Notary Public
 23
 24
 25

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1 CERTIFICATE OF DEPOSITION OFFICER
 2 I, ARKADY SANDOVAL, the officer before whom the
 3 foregoing proceedings were taken, do hereby certify that
 4 any witness(es) in the foregoing proceedings, prior to
 5 testifying, were duly sworn; that the proceedings were
 6 recorded by me and thereafter reduced to typewriting by a
 7 qualified transcriptionist; that said digital audio
 8 recording of said proceedings are a true and accurate
 9 record to the best of my knowledge, skills, and ability;
 10 that I am neither counsel for, related to, nor employed by
 11 any of the parties to the action in which this was taken;
 12 and, further, that I am not a relative or employee of any
 13 counsel or attorney employed by the parties hereto, nor
 14 financially or otherwise interested in the outcome of this
 15 action.
 16

 17 ARKADY SANDOVAL
 18 Notary Public in and for the
 19 State of New Jersey and
 20 State of New York
 21
 22 [X] Review of the transcript was requested.
 23
 24
 25

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1 CERTIFICATE OF TRANSCRIBER
 2 I, SUSAN J. SPAULDING, do hereby certify that
 3 this transcript was prepared from the digital audio
 4 recording of the foregoing proceeding, that said transcript
 5 is a true and accurate record of the proceedings to the
 6 best of my knowledge, skills, and ability; that I am
 7 neither counsel for, related to, nor employed by any of the
 8 parties to the action in which this was taken; and,
 9 further, that I am not a relative or employee of any
 10 counsel or attorney employed by the parties hereto, nor
 11 financially or otherwise interested in the outcome of this
 12 action.
 13
 14

 15 SUSAN J. SPAULDING
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ERRATA SHEET
VERITEXT/NEW YORK REPORTING, LLC

CASE NAME: Hangzhou Chic v. The Partnerships And Unincorporated
DATE OF DEPOSITION: 10/26/2022
WITNESSES' NAME: Jim Gandy

Jim Gandy

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THIS ____ DAY OF _____, 20__.

(NOTARY PUBLIC) MY COMMISSION EXPIRES:

[& - able]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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